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THE GENERAL STATUTES OF NORTH CAROLINA

1971 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
W. M. WILLSON, J. P. MUNGER, SYLVIA FAULKNER AND
H. A. FINNEGAN, JR.

Volume 3C

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Preface

This Cumulative Supplement to Replacement Volume 3C contains the general laws of a permanent nature enacted at the 1965, 1966, 1967, 1969 and 1971 Sessions of the General Assembly, which are within the scope of such volume and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1965, 1966, 1967, 1969 and 1971 Sessions of the General Assembly affecting Chapters 137 through 156 of the General Statutes.

Annotations:

Sources of the annotations:
North Carolina Reports volumes 260 (p. 133)-279 (p. 191).
North Carolina Court of Appeals Reports volumes 1-11 (p. 596).
Federal Reporter 2nd Series volumes 317-443 (p. 1216).
Federal Supplement volumes 217-328 (p. 224).
United States Reports volumes 373-403 (p. 442).
Supreme Court Reporter volumes 83 (p. 1560)-91 (p. 1976).
North Carolina Law Review volumes 41 (p. 665)-49 (p. 591).
Wake Forest Intramural Law Review volumes 2-6 (p. 568).
Opinions of the Attorney General.

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The General Statutes of North Carolina
1971 Cumulative Supplement

VOLUME 3C

Chapter 137.
Rural Rehabilitation.

ARTICLE 2.
North Carolina Rural Rehabilitation Corporation.

§ 137-31. Designated a State agency.

State Government Reorganization.—The Rural Rehabilitation Corporation was transferred to the Department of Agriculture by § 143A-63, enacted by Session Laws 1971, c. 864.

§ 137-31.3. Members of board of directors; terms of office; per diem and expenses.—The governing body of the North Carolina Rural Rehabilitation Corporation shall be a board of directors consisting of nine members, of whom the Commissioner of Agriculture, the Director of the Co-operative Agricultural Extension Service of the North Carolina State College of Agriculture and Engineering of the University of North Carolina, the Director of the Division of Vocational Education of the State Department of Public Instruction, and the North Carolina State Director of the Farmers Home Administration of the United States Department of Agriculture, or in the event of a change of name of any of said offices, the persons performing the principal duties of said offices, by whatever name called, shall be ex officio members, and the remaining five members shall be named by the Governor of North Carolina. Of the five directors first named by the Governor, one shall be appointed for a term of one year, two shall be appointed for terms of two years each and two for terms of three years each, and subsequent appointments shall be made for terms of three years each. The members of the board appointed by the Governor shall be entitled to receive from the funds of the corporation, while attending meetings of the board and of committees appointed or authorized by the board and while performing other services for the corporation, a per diem of ten dollars ($10.00) and reimbursement for such actual necessary expenses as may be incurred in travel and subsistence, not in excess of that allowed by the General Assembly for other State agencies, but while a member is serving as an officer of the corporation he may be paid such reasonable salary as the majority of the members of the board shall from time to time determine in lieu of such per diem. The ex officio members of the board shall serve without compensation and shall be reimbursed for actual costs of travel and subsistence by the agency which they represent. (1953, c. 724, s. 3; 1963, c. 1005; 1965, c. 190.)

Editor's Note.—

The 1965 amendment rewrote the third sentence.

Chapter 138.

Salaries, Fees and Allowances.

Sec.
138-7. Exceptions to §§ 138-5 and 138-6.

§ 138-5. Per diem and allowances of State boards, etc.

(b) Members of State boards, commissions, and committees shall be allowed travel expenses at the following rates:

(1) For transportation by privately-owned automobile, the same mileage allowance as is paid State officers and employees pursuant to G.S. 138-6(a)(1).
(2) For bus, railroad, pullman, or other public conveyance, actual fare;
(3) For subsistence, the actual amount expended for room, meals, and reasonable gratuities, not to exceed a total of twenty-five dollars ($25.00) per day when traveling in or out of the State: Provided, that subject to the approval of the Director of the Budget, members who attend meetings of boards, commissions and committees held in their home communities shall be allowed subsistence reimbursement for meals on the days they attend such meetings;
(4) For convention registration fees, the actual amount expended, as shown by receipt.

(1965, c. 169; 1971, c. 1139.)

Editor's Note.—

The 1965 amendment, effective retroactively to Feb. 1, 1965, substituted "twenty dollars ($20.00) per day when traveling in or out of the State" for "twelve dollars ($12.00) per day when traveling in State or a total of fourteen dollars ($14.00) when traveling out of State" in subdivision (3) of subsection (b).

The 1971 amendment, effective July 1, 1971, in subsection (b), substituted in subdivision (1) the language beginning "the same mileage" for "eight cents (8¢) per mile of travel and the actual cost of tolls paid," substituted in subdivision (3) "twenty-five dollars ($25.00)" for "twenty dollars ($20.00)," and substituted in subdivision (4) "the actual amount expended, as shown by receipt" for "not to exceed ten dollars ($10.00) per convention period."

As only subsection (b) was changed by the amendments, the rest of the section is not set out.

§ 138-6. Travel allowances of State officers and employees.—(a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately owned automobile, ten cents (10¢) per mile of travel and the actual cost of tolls paid;
(2) For bus, railroad, Pullman, or other conveyance, actual fare;
(3) For subsistence, the actual amount expended for room, meals, and reasonable gratuities, not to exceed a total of seventeen dollars and fifty cents ($17.50) per day when traveling in State or a total of twenty-five dollars ($25.00) per day when traveling out of State;
(4) For convention registration fees, not to exceed fifteen dollars ($15.00) per convention.

(1965, c. 1089; 1969, c. 1153; 1971, c. 881, ss. 1, 2.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, increased the subsistence allowances from ten and fourteen dollars to twelve and sixteen dollars in subdivision (3) of subsection (a).

The 1969 amendment, effective July 1, 1969, increased the mileage allowance for use of privately owned automobiles from eight cents to nine cents per mile, the maximum in-state subsistence allowance from twelve dollars to fifteen dollars per day and the maximum out-of-state subsistence allowance from sixteen dollars to eighteen dollars per day, all in subsection (a).

The 1971 amendment, effective July 1, 1971, substituted "ten cents (10¢)" for "nine cents (9¢)" in subsection (a)(1), substituted "seventeen dollars and fifty cents ($17.50)" for fifteen dollars ($15.00)" in subsection (a)(3), substituted "twenty-five dollars ($25.00)" for "eighteen dollars ($18.00)" in that subsection, and substituted "fifteen dollars ($15.00)" for "ten dollars ($10.00)" in subsection (a)(4).

As subsection (b) was not affected by the amendments, it is not set out.

§ 138-7. Exceptions to §§ 138-5 and 138-6.—The Director of the Budget, with the approval of the Advisory Budget Commission, shall establish and publish uniform standards and criteria under which actual expenses in excess of the seventeen dollars and fifty cents ($17.50) for in-state travel, twenty-five dollars ($25.00) for out-of-state travel, and the ten dollar ($10.00) limit on convention registration, prescribed in G.S. 138-5 and 138-6, may be authorized for extraordinary charges for hotel, meals, and registration, whenever such charges are the result of required official business. No expenditures in excess of the maximum amounts set forth in G.S. 138-5 and 138-6 shall be reimbursed unless the head of the State department, agency or institution involved has secured the approval of the Director of the Budget prior to the making of such expenditures. (1961, c. 833, s. 6.1; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, s. 3.)

Editor's Note. – The 1965 amendment, effective July 1, 1965, increased the amount of expenses for out-of-state travel from fourteen to sixteen dollars.

The 1969 amendment, effective July 1, 1969, substituted "fifteen dollars ($15.00)" for "ten dollars ($10.00)" and "eighteen dollars ($18.00)" for "sixteen dollars ($16.00)" near the beginning of the section.

The 1971 amendment, effective July 1, 1971, substituted in the first sentence "the seventeen dollars and fifty cents ($17.50) for in-state travel, twenty-five dollars ($25.00) for out-of-state" for "the fifteen dollars ($15.00) for in-state travel, eighteen dollars ($18.00) for out-of-state."

Director of the Budget Has Authority to Authorize Payment of Actual Expenses in Excess of Statutory Maximum.—See opinion of Attorney General to Mr. G. Andrew Jones, State Budget Office, Department of Administration, 5/21/70.

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

Sec.

139-8.1. Purposes of chapter.

Article 2.

Watershed Improvement Districts.

139-37.1. Borrowing by local units for anticipated water supplies.
139-38. Power of eminent domain conferred on watershed improvement districts.

Article 3.

Watershed Improvement Programs; Expenditure by Counties.

Sec.

139-44. Power of eminent domain conferred on counties in certain cases.
139-45. Extraterritorial powers of counties.
139-46. Recreational and related aspects of watershed improvement programs.
139-47. Procedures to be followed in connection with watershed improvement or drainage projects that involve channelization.

ARTICLE 1.

General Provisions.

§ 139-1. Title of chapter.

Editor's Note.—

For article on "Introduction to Water Use Law in North Carolina," see 46 N.C.L. Rev. 1 (1967).

For note on disposition of diffused surface waters in North Carolina, see 47 N.C.L. Rev. 205 (1968).

§ **139-3. Definitions.**—Wherever used or referred to in this Chapter, unless a different meaning clearly appears from the context:

(3) "Board" or "State Board" means the Board of Water Resources of the State of North Carolina, or the board, body or commission succeeding to its principal functions, or in whom shall be vested by law the powers herein granted to the said Board of Water Resources.

(17) A "watershed improvement project" means a project of watershed improvement (whether involving flood prevention, drainage improvement, water supply, soil and water conservation, recreation facilities, fish and wildlife habitat, or other related purposes, singly or in combination) which is undertaken:

a. By a watershed improvement district under the provisions of Article 2 of Chapter 139 of the General Statutes of North Carolina or any local act granting similar powers.

b. By a soil and water conservation district under the provisions of Article 1 of Chapter 139 of the General Statutes or any local act granting similar powers.

c. By a drainage district under the provisions of Chapter 156 of the General Statutes or any local act granting similar powers.

d. By a county that is carrying out a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes or any local act granting similar powers.

e. By any combination of the foregoing, acting as joint sponsors of a watershed improvement program.

f. By any watershed, drainage or flood control project planned or carried out by the Soil Conservation Service, Tennessee Valley Authority or the Army Corps of Engineers.

(18) A "watershed improvement work" means a single feature or facility or portion of a watershed improvement project, such as a water retarding

or impoundment structure for one or more authorized watershed purposes or a section of improved stream channel or the land treatment measures associated with a water retarding structure. (1937, c. 393, s. 3; 1947, c. 131, s. 2; 1959, c. 781, s. 4; 1965, c. 582, s. 1; 1967, c. 987, s. 1; 1971, c. 1138, s. 1A.)

Editor's Note.—

The 1965 amendment substituted "Resources" for "Commissioners" in the name of the Board in subdivision (3).

The 1967 amendment added subdivisions (17) and (18).

Session Laws 1967, c. 987, provides in part: "Sec. 11. Nothing contained in this act shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State.

"Sec. 12. The authority granted hereinabove is supplemental and additional to any other authority granted by law relating to watershed improvement programs, whether by general or special law."

The 1971 amendment added subdivision (17)f.

As the rest of the section was not affected by the amendments, only the introductory paragraph and subdivisions (3), (17), and (18) are set out.

§ 139-4. State Soil and Water Conservation Committee.—(a) There is hereby established to serve as an agency of the State and to perform the functions conferred upon it in this Chapter, the State Soil and Water Conservation Committee which shall be composed of the following members:

(1) The president, first vice-president, and the immediate past president of the North Carolina Association of Soil and Water Conservation Districts. Vacancies arising in any of these three positions shall be filled through appointment by the executive committee of the North Carolina Association of Soil and Water Conservation Districts. Members shall take office upon their election and shall serve until their successors shall have been elected and qualified.

(2) Three supervisor members elected by the North Carolina Association of Soil and Water Conservation Districts from its own membership representing the three major geographical regions of the State; such elections to be held during the annual meeting of the Association. At the initial election, one member shall be elected for three years, one member shall be elected for two years, and one member shall be elected for one year. All subsequent elections shall be for a three-year term of office. Members shall take office upon their election, and shall serve until their successors shall have been elected and qualified. Vacancies arising in any of these positions shall be filled through appointment by the executive committee of the North Carolina Association of Soil and Water Conservation Districts. No person so elected shall be eligible to serve more than two successive terms.

(3) An additional member shall be designated by the State Soil and Water Conservation Committee for a term of two years beginning on January 1. No person so designated by the Committee may be appointed for more than two successive terms.

(4) The Committee shall invite the Director of the State Agricultural Extension Service, the Director of the State Agricultural Experiment Station, the State Forester and the State Conservationist of the Soil Conservation Service to serve as advisory nonvoting members of the Committee.

The Committee, in cooperation with the North Carolina State University at

Raleigh, North Carolina, shall develop a program for soil conservation and for other purposes as provided for in this Chapter, and shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this Chapter.

(b) The State Soil Conservation Committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require. The Committee may call upon the Attorney General of the State for such legal services as it may require; it shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the seat of the State government, and shall be furnished with the necessary supplies and equipment. Upon request of the Committee, for the purpose of carrying out any of its functions, the supervising officer of any State agency, or of any State institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the Committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the Committee may request.

(1965, c. 582, s. 2; c. 932; 1971, c. 396.)

Editor's Note.—

The first 1965 amendment substituted "North Carolina State University at Raleigh, North Carolina" for "North Carolina State College of Agriculture and Engineering in the State" near the end of subsection (a).

The second 1965 amendment deleted "and shall determine their qualifications, duties and compensation" formerly appearing at the end of the first sentence of subsection (b).

The 1971 amendment, effective Jan. 1, 1972, so changed subsection (a) as to make a detailed comparison impracticable.

As only subsections (a) and (b) were changed by the amendments, the rest of the section is not set out.

State Government Reorganization.—The Soil and Water Conservation Committee was transferred to the Department of Natural and Economic Resources by § 143A-124, enacted by Session Laws 1971, c. 864.

§ **139-5. Creation of soil conservation districts.**—(a) Any twenty-five occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Soil Conservation Committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the State Soil Conservation Committee duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the Committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the State Soil Conservation Committee may consolidate all or any such petitions.

Town or village lots or government owned or controlled lands may be included within the boundaries of any district. As used in this subsection: The term "government owned or controlled land" includes land owned or controlled by any governmental agency or subdivision, federal, State or local; and the term "town and village lots" means parcels or tracts on which no agricultural operations are conducted, or (being less than three acres in extent) whose production of agricultural products for home use or for sale during the immediately preceding calendar year was of less than $250.00 in value. This section applies to existing soil conservation districts as well as districts that may hereafter be formed. Insofar as it applies to existing districts it is intended to be declaratory of the present boundaries of such districts as defined by other charters.

(1965, c. 582, s. 3.)

Editor's Note.—

Prior to the 1965 amendment the first sentence of the last paragraph of subsection (a) read "No town or village lots or government owned or controlled lands shall be included within the boundaries of any district."

As only subsection (a) was changed by the amendment, the rest of the section is not set out.

§ 139-8. Powers of districts and supervisors.

(6) To construct, improve, operate, and maintain such structures, works and projects as may be necessary or convenient for the performance of any of the operations authorized in this chapter, including watershed improvement structures, works, and projects as well as any other structures, works, and projects which the district is authorized to undertake.

(1969, c. 711, s. 1.)

Local Modification.—Duplin, as to subdivision (6): 1969, c. 286; Johnston: 1969, c. 955; New Hanover: 1969, c. 958; Pender and Sampson, as to subdivision (6): 1969, c. 286; Wayne: 1969, c. 821.

Editor's Note.—

The 1969 amendment rewrote subdivision (6).

As the rest of the section was not changed by the amendment, only subdivision (6) is set out.

Disposition or Exchange of Land by Watershed Improvement District. — See opinion of Attorney General to Mr. Samuel H. Johnson, Watershed Improvement Commission, 41 N.C.A.G. 228 (1971).

§ 139-8.1. Purposes of chapter.—(a) It is hereby declared that the provisions of General Statutes chapter 139 were intended to authorize the maintenance of watershed improvement works and projects, as well as watershed improvement structures. All expenditures heretofore incurred by any local watershed sponsor for any such maintenance of works, projects, or structures are hereby validated and confirmed.

(b) The proceeds of any tax heretofore approved by the voters of a county for a county watershed improvement program, or authorized by special or local act for a county watershed improvement program, may be expended for such maintenance of works and projects, as well as structures, if the board of county commissioners or other watershed governing body after a public hearing determines that the proceeds should be so expended. Notice of such hearing shall be published as provided for notices under article 2 of General Statutes chapter 139.

(c) The proceeds of any tax hereafter approved by the voters of a county for a watershed improvement program may be expended for such maintenance of works and projects, as well as structures, with or without the holding of a public hearing as designated by subsection (b) of this section, even though any election procedures preliminary to the vote approving the tax may have been initiated prior to the ratification of this section.

(d) No action based on the alleged invalidity of the expenditures herein confirmed or of the use of tax proceeds herein authorized shall lie after January 1, 1970, to enjoin or contest any such expenditure or any such use of tax proceeds. (1969, c. 711, s. 1.)

Editor's Note. — Session Laws 1969, c. 711, from which this section was codified, was ratified June 5, 1969, and made effective on ratification.

ARTICLE 2.

Watershed Improvement Districts.

§ 139-16. Establishment within soil conservation district authorized.—Watershed improvement districts may be established within one or more soil conservation districts or within and without such districts, to the extent permitted by G.S. 139-18(a), in accordance with the provisions of this Article; provided that no watershed improvement district may be established on or after January 1, 1972. (1959, c. 781, s. 8; 1971, c. 1138, s. 1.)

Editor's Note.—

The 1971 amendment added the proviso at the end of the section.

§ 139-24. Status and general powers of district; power to levy assessment.

Local Modification. — Iredell: 1961 c. 794, s. 1; 1963, c. 955; Onslow: 1967, c. 725, s. 2; Rowan: 1961, c. 794, s. 1; 1963, c. 109; Union: 1961, c. 794, s. 1; 1963, c. 955; 1965, c. 19, s. 2.

§ 139-27. Collection and payment of assessments; expenditure of proceeds thereof and of other district funds. — (a) (1) The landowner against whom an assessment is made shall have the option of paying the entire assessment, if he so elects and gives written notice accordingly to the secretary-treasurer of the district within 15 days after the confirmation of the assessment roll and upon his failure to so notify the district, he shall be deemed to have elected to pay the assessment in annual installments. Assessments (and installments of assessments) shall become due and payable on the date provided by law for payment of ad valorem property taxes in the county. Interest shall be charged for late payments, and discounts shall be allowed for prepayment of assessments, in the amounts and during the periods covered by law with respect to payment of ad valorem property taxes in the county. The entire assessment may be paid at any time by payment of the principal and all interest accrued to that date.

(2) It is the intent and purpose of this subsection that any assessment (initial, subsequent or annual) may as determined by the assessment roll be paid and collected in multiple annual installments in such installment amounts and spread over such installment periods as the assessment roll may fix. As to any assessment roll which shall fix and determine multiple annual installment payments spread over periods in excess of three years, the following modifications of designated subsections of this section shall apply:

a. In subsection (b) "three" shall read "multiple";

b. In subsection (c) "second and third" shall read "subsequent";

c. In subsection (d) "second and third" shall read "subsequent"; "one and two years, respectively" shall read "in subsequent years"; and the form of the order of the board of commissioners to the county tax collector shall be suitably modified;

d. In subsection (b) the form of assessment receipt shall be suitably modified for fourth and subsequent annual installments.

(b) After confirmation of the assessment roll the district shall have prepared a form of receipt, with appropriate stubs attached, for the assessment due on each tract or parcel of land as recited in the assessment roll. A separate sheet shall be used for each tract or parcel assessed, and each such separate sheet shall contain three perforated receipts attached to a single stub, with appropriate entries and blank spaces substantially as set forth in subsection (h) of this section. The receipts and stubs for land within each county wherein any part of his district lies shall be separately bound. The bound books of assessment receipts shall be endorsed "Assessments of the (here give the name of the district) Watershed Improvement District due on the first Monday of October, 19....," and the same endorsement shall be printed at the top of each assessment receipt. The necessary cost of printing and binding such books of assessment receipts and the filling in of the same shall be a proper charge against the district and shall be paid by the board of trustees.

(c) During the month of September next following the confirmation of the assessment roll the district shall mail to the landowners the receipts for the first annual installment with the blanks duly filled in. The district shall also remove from the bound books, and retain, the receipts for the second and third annual installments. On or before the twenty-fifth day of such month the appropriate bound book of stubs, with the names of the property owners and assessment and installment amounts duly filled in, shall be delivered to the board of commissioners of each county wherein any part of the district lies. On or before the first Monday of October next following the said boards of commissioners shall cause such bound books to be delivered to their respective county tax collectors, together with appended orders in substantially the following form:

> Tax Collector, ... County:
> This is to certify that the attached book of assessment stubs embraces watershed assessments made on certain lands in the County of .... which are located within the boundaries of the .... Watershed Improvement District. The affected landowners, unless otherwise indicated to the contrary, have elected to pay their assessments in installments, the first of which becomes due on the first Monday of October, 19...., and must be paid and collected within the time and in the manner required by law. (See G.S. 139-27). Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county. You will enter the dates of payments on the stubs and retain the book of stubs in a safe place for use in recording subsequent annual installments. You will make monthly settlements of your collections with the secretary-treasurer of the .... Watershed Improvement District, and in all other respects you will discharge your duties as tax collector as required by law.
>
> In witness whereof I have hereunto set my hand and official seal, this .... day of ...., 19.......
>
> ....
> Chairman, Board of Commissioners,
> .... County

(d) The procedure for the second and third annual installments shall be set forth in this subsection. The district shall mail the receipts for such installments with blanks duly filled in to the landowners during the month of September, one and two years, respectively, after the mailing of the receipts for the first installment. On or before the twenty-fifth day of such month there shall be delivered to the boards of county commissioners a notice of the due date of the installment. On or before the first Monday of October next following the said boards of commissioners shall cause to be delivered to their respective county tax collectors orders in substantially the following form, omitting therefrom the appropriate bracketed words and phrases:

> Tax Collector ....County:
> This is to certify that the [second] [third] installment of the watershed assessment of the .... Watershed Improvement District becomes due on the first Monday of October, 19...., and must be paid and collected within the time and in the manner required by law. (See G.S. 139-27).

Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county. You will enter the dates of payments on the stubs [and retain the book of stubs in a safe place for use in recording the third annual installment] [and thereafter retain or dispose of the book of stubs in the manner provided by law.] You will make monthly settlements of your collections with the secretary-treasurer of the .... Watershed Improvement District, and in all other respects you will discharge your duties as tax collector as required by law.

In witness whereof I have hereunto set my hand and official seal, this......... .... day of ....19.....

....
Chairman, Board of Commissioners
......................County

(e) All watershed assessments shall be collected by the county tax collector in the same manner as county taxes, except as otherwise herein provided, and such collections shall be enforced in the manner provided by G.S. 105-414 and subsections (f) through (v) of G.S. 105-391; provided, however, that there shall be no right to proceed against personal property in enforcing such collections. The tax collector shall be required on the first day of each month to make settlements with the secretary-treasurer of the Watershed Improvement District of all collections of watershed assessments for the preceding month, and to deposit all moneys so collected in an account maintained in the name of the district at an official depository designated by the district. Such account shall also be used for the deposit of all other funds of the district. Expenditures from such account may be made with the approval of the trustees of the district on requisition from the chairman and the secretary-treasurer of the district. The fee allowed the tax collector for collecting the watershed assessments shall be two percent (2%) of the amount collected, except that, where the tax collector is on a salary basis, such fee shall be paid into the general fund of the county.

If the tax collector shall willfully fail or neglect to comply with any requirement of law concerning collection or deposit of watershed assessments, he shall be guilty of a misdemeanor, and upon conviction shall be subject to fine and imprisonment, in the discretion of the court. He shall likewise be liable to a civil action for all damages which may accrue either to the trustees of the district or the holders of its bonds, to either or both of whom a right of action is hereby given.

(f) No statute of limitation, whether fixed by law especially referred to in this chapter or otherwise, shall bar the right of the district to enforce any remedy provided by law for the collection of unpaid assessments, save from and after 10 years from and after the due date thereof, or, if payable in installments, 10 years from and after the due date of any installment.

(g) All proceedings for watershed assessments under the provisions of this article shall be regarded as proceedings in rem (and no mistake or omission as to the name of the owner or person interested in any tract or parcel of land affected thereby shall be regarded a substantial mistake or omission).

(h) Form of Assessment Receipts with Stub.

Landowner
....
Owner's Address
....
Amount of Entire Assessment
....
Date Paid
....
Amount of Each Annual Installment
....
Date 1st Annual Installment Paid
....
Date 2nd Annual Installment Paid
....
Date 3rd Annual Installment Paid
....

Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of October, 19.....
Landowner ....
Unpaid Balance of Entire Assessment ....
Amount of 1st Annual Installment due ....
Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county.
PAYABLE TO TAX COLLECTOR, ...
.... County, ...
North Carolina

Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of October, 19.....
Landowner ....
Unpaid Balance of Entire Assessment ....
Amount of 2nd Annual Installment due ....
Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county.
PAYABLE TO TAX COLLECTOR,
.... County
.... North Carolina

Assessments of the (here give the name of district) Waterhed Improvement District due on the first Monday of October, 19.....
Landowner ....
Unpaid Balance of Entire Assessment ....
Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county.
PAYABLE TO TAX COLLECTOR,
.... County
.... North Carolina.

(1959, c. 781, s. 8; 1963, c. 1228, s. 5; 1967, c. 1085, s. 1.)

Editor's Note.—

Prior to the 1967 amendment, which rewrote this section, assessments or installments were due on the first Monday of August, the entire assessment became due if any installment was not paid, and interest on unpaid assessments was at the rate of one third of one percent per month. Section 3 of the 1967 amendatory act provides that with regard to watershed improvement districts thereafter created, the act took effect upon its ratification and that with regard to any existing watershed improvement district, the act became effective upon the confirmation of the first assessment roll that was confirmed following the ratification of the act. The act was ratified July 3, 1967.

Section 105-414, cited near the beginning of subsection (e) of this section was repealed by Session Laws 1971, c. 806, s. 3, effective July 1, 1971. See now § 105-374. Former § 105-391, also cited near the beginning of subsection (e) of this section, was part of Subchapter II of Chapter 105, which was revised by Session Laws 1971, c. 806, effective July 1, 1971. See the Editor's note to § 105-271. For present provisions similar to former § 105-391, see § 105-374.

§ 139-35. Supervision by State Board.

(c) The State Board shall be the State agency to which watershed work plans developed under Public Law 566 (83rd Congress, as amended) for contemplated works of improvement shall be submitted for review and approval or disapproval. All other work plans for contemplated works of improvement pursuant to this chapter shall likewise be submitted to the Board for review and for approval or disapproval. The Board shall approve such work plans if, in its judgment, the work plans

(1) Provided for proper and safe construction of proposed works of improvement;

(2) Show that the construction and operation of the proposed works of improvement (in conjunction with other such works and related structures of the district and the watershed) will not appreciably diminish the flow of useful water that would otherwise be available to existing downstream water users during critical periods;

(3) Determine whether a program of flood plain management in connection with such proposed works is in the public interest, and to withhold approval until satisfactory measures are incorporated; and

(4) Are otherwise in compliance with law.

No work of improvement may be constructed or established without the approval of work plans by the Board pursuant to this subsection. The Board may publish flood plain management criteria to be followed by those persons, district, or other agencies preparing such work plans. The construction or establishment of any such work of improvement without such approval, or without conforming to a work plan approved by the Board, may be enjoined. The Board may institute an action for such injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in any such action shall be as provided in article 37, chapter 1 of the General Statutes.

(1967, c. 1070, ss. 2, 3.)

Editor's Note.—

The 1967 amendment redesignated former subdivision (3) of subsection (c) as subdivision (4), inserted present subdivision (3), and inserted the present second sentence in the second paragraph of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 139-37.1. Borrowing by local units for anticipated water supplies.—(a) Any local unit may issue bonds or other obligations in the manner provided by this section (and may appropriate and expend funds derived therefrom (for the purpose of financing all or any part of the cost of providing storage capacity for anticipated future or present water supply needs, in conjunction with any watershed improvement work or project.

(b) Any two or more local units, each situated in whole or in part in the basin of the same river in which a watershed improvement work or project is located, may issue bonds or other obligations for the purpose stated in subsection (a) of this section in such amounts as constitute their proportionate parts, respectively, of the estimated cost of such a work or project. The governing bodies of said local units shall jointly determine and agree upon the proportionate part of the estimated cost which each local unit is to bear, taking into consideration the taxable resources of each local unit and such other economic and beneficial factors as deemed pertinent and advisable, and such determination shall be recorded in the minutes of each such body.

(c) Such bonds or other obligations of counties shall be issued pursuant to the County Finance Act, as amended: Provided, the amount thereof shall constitute an item to be included in the sum in item (8) of § 153-84 of the said act in arriving at the net debt for other than school purposes in item (9) of said section: Provided, further, the provisions of §§ 153-80, 153-82 and 153-103 of said act shall not apply to such bonds. Such bonds or obligations shall mature at such time or times, not exceeding 40 years from their date, and may be subject to redemption with or without premium as the governing body may by resolution determine, with the approval of the Local Government Commission.

(d) Such bonds or other obligations of municipalities shall be issued pursuant to the Municipal Finance Act, 1921, as amended, and the amount thereof shall constitute a deduction from the gross debt under subsection (a) (2) of § 160-383 of said act: Provided, the provisions of §§ 160-382 and 160-391 shall not apply to such bonds and such bonds may not be consolidated with bonds authorized by another ordinance as provided in § 160-380 of said act. Such bonds or obligations shall mature at such time or times, not exceeding 40 years from their date, and may be subject to redemption with or without premiums as the governing body may determine, with the approval of the Local Government Commission.

(e) Notwithstanding any other provisions of law, the Local Government Commission may sell any bonds or other obligations issued pursuant to this section to the United States of America, or any agency thereof, at private sale and without advertisement. The first installment of principal of bonds or other obligations issued under this section may be made payable not more than 10 years after the date of the bonds or obligations. Accrual of interest may be deferred not more than 10 years. Any such bonds or other obligation may contain appropriate provisions which will authorize the initiation of payments of interest and installments of principal on the bonds on a date not later than 10 years from the date of such bonds or obligations, or on the date when the local unit shall begin to use such local water supplies, whichever date shall occur first. The date on which such use of local water supplies begins shall be determined by the governing body of the local unit issuing such bonds or other obligations, which determination shall be binding and conclusive.

(f) If the bonds or other obligations of one or more local units which have agreed upon their proportionate part of the estimated cost, as provided for in subsection (b) of this section, are required by the laws or the Constitution to be submitted to the voters of such local unit at an election and a majority of said voters voting in said election vote against the issuance of such bonds, the bonds or other obligations of any other local unit which have been duly authorized may be issued in whole or in part only when a sufficient number of local units have agreed upon their proportionate part as provided in subsection (b) of this section and have duly authorized their bonds or obligations so that the full amount of such estimated cost may be paid.

(g) As used in this section the following terms have the following meanings:

"Local unit" mean any county or municipality.

"Local water supplies" include any municipal or county water supplies, whether or not the purposes served by a particular storage facility financed under this section initially include service to domestic or any other water supply customers.

"Costs" include the cost of water storage capacity in a structure or facility (or other equivalent costs for water supply purposes) and the cost of facilities for release or withdrawal of water stored for water supply purposes, as well as other installation costs of a structure or facility including costs of real and personal property, easements, options, or other interests in real property, and water rights, engineering and inspection fees, contract administration costs, and costs of conveyance facilities for local water supplies. (1967, c. 987, s. 4.)

Cross Reference.—See Editor's note to § 139-3.

§ 139-38. Power of eminent domain conferred on watershed improvement districts.—(a) A watershed improvement district shall have the power to acquire by condemnation any interest in land needed in carrying out the purposes of this act, except interests in land within the boundaries of any project licensed by the Federal Power Commission or interests in land owned or held for use by a public utility as defined in G.S. 62-3. This power may be exercised only after:

(1) The district makes application to the Committee, identifying the land sought to be condemned and stating the purposes for which said land is needed; and

(2) The Committee finds that the land is sought to be acquired for a proper district purpose. The findings of the Committee shall be conclusive in the absence of fraud, notwithstanding any other provision of law.

(b) The Committee shall certify copies of its findings to the applicant district, the State Board and the clerk of superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings thereof.

(c) For purposes of this section:

(1) The term "interest in land" means any land, right-of-way, right of access, privilege, easement, or other interest in or relating to land. Said "interest in land" does not include an interest in land which is held or used in whole or in part for a public water supply, unless such "interest in land" is not necessary or essential for such uses or purposes.

(2) A "description" of land shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the applicant district, boundaries may be described by any of the following methods or any combination thereof: By reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land.

(3) "Committee" means the State Soil and Water Conservation Committee.

(d) The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in G.S. chapter 40, article 2, and all acts amendatory thereof.

(e) Interests in land acquired pursuant to this section may be used in such manner and for such purposes as the trustees of the district deem best. If, in the opinion of the trustees, such lands should be sold, leased or rented, the trustees may do so, subject to the approval of the Committee.

(f) All provisions of local acts inconsistent herewith limiting condemnation powers of watershed improvement districts or of counties for county watershed improvement programs are hereby repealed. (1967, c. 987, s. 5.)

Cross Reference.—See Editor's note to § 139-3.

ARTICLE 3.

Watershed Improvement Programs; Expenditure by Counties.

§ 139-39. Alternative method of financing watershed improvement programs by special county tax.—The board of county commissioners in any county is authorized to call a special election to determine whether it be the will of the qualified voters of the county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed twenty-five cents (25¢) on each one hundred dollars ($100.00) valuation of property in said county, to be known as a "Watershed Improvement Tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the prevention of floodwater and sediment damages, and for furthering the conservation, utilization and disposal of water and the development of water resources. (1959, c. 781, s. 10; 1967, c. 987, s. 8.)

Local Modification.—Alexander: 1967, c. 500; Cabarrus: 1965, c. 615; Caswell: 1969, c. 553; Graham: 1967, c. 503; Iredell: 1967, c. 623; Johnston: 1969, c. 955; Lincoln:

1969, c. 934; Mecklenburg: 1969, c. 1191; New Hanover: 1969, c. 958; Onslow: 1967, c. 725, s. 1; Person: 1967, c. 111, s. 1; Rowan: 1967, c. 568; Union: 1965, c. 19, s. 1; Wayne: 1969, c. 821.

Cross Reference.—See Editor's note to § 139-3.

Editor's Note. — The 1967 amendment deleted "within the county" at the end of this section.

§ 139-40. Conduct of election.

(b) The form of the question shall be substantially the words "For Watershed Improvement Tax of Not More Than..........Cents Per One Hundred Dollar ($100) Valuation," and "Against Watershed Improvement Tax of Not More Than ....Cents Per One Hundred Dollar ($100) Valuation," which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voter may make a mark "X" to designate the voter's choice for or against such tax, provided, the board of county commissioners may vary the aforesaid form of the question to be placed upon the ballot for the watershed improvement tax election in such manner as the board deems appropriate, and the board of elections shall cause to be placed upon the ballot such form of the question as may be requested by the board of county commissioners. The board of county commissioners shall designate the amount of the maximum annual rate of such tax to be levied, which amount may be less than but may not exceed twenty-five cents (25¢) on the one hundred dollar ($100) valuation of property in the county, and said amount shall be stated on the ballot in the question to be voted upon. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked "Watershed Improvement Tax Election."

(1969, c. 711, s. 2.)

Local Modification.—Alexander: 1967, c. 500; Cabarrus: 1965, c. 615; Caswell: 1969, c. 553; Graham: 1967, c. 503; Iredell: 1967, c. 623; Johnston: 1969, c. 955; Lincoln: 1969, c. 934; Mecklenburg: 1969, c. 1191; New Hanover: 1969, c. 958; Onslow: 1967, c. 725, s. 1; Person: 1967, c. 111, s. 1; Rowan: 1967, c. 568; Union: 1965, c. 19, s. 1; Wayne: 1969, c. 821.

Editor's Note.—

The 1969 amendment added the proviso at the end of the first sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 139-41. Powers of county commissioners.—(a) If the majority of the qualified voters voting in such election favor the levying of such tax, then and in that event, the board of county commissioners shall have all powers of soil and water conservation districts as set forth in subdivisions (1), (2), (3), (4), (5). (6), (7), (8) and (10) of G.S. 139-8 (subject to the limitations set forth in subdivision (12) of such section) concerning flood prevention, development of water resources, floodwater and sediment damages, and conservation, utilization and disposal of water. It is the intention of the General Assembly that such powers shall normally be exercised within all or parts of one or more single watersheds, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases; provided, however, it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.

(d) The board of county commissioners, as an alternative to itself exercising the powers set forth in subsection (a) of this section or to creating a watershed improvement commission for that purpose, may by resolution designate the soil and water conservation district having jurisdiction in the county to exercise authority for the board of county commissioners in carrying out the county watershed improvement program. The provisions of G.S. 139-22 and G.S. 139-23 concerning the organization and compensation of the elected board of trustees of a watershed improvement district, and concerning the power and duties of such trustees respecting personnel, surety bonds and audits, shall apply to any soil and water conservation district so designated. The soil and water conservation district shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30.

(e) Counties which carry out watershed improvement programs under this Article shall be subject to supervision by the State Board pursuant to G. S. 139-35 to the same extent as are watershed improvement districts, and, for this purpose the words "districts" and "watershed improvement districts," wherever they occur in such section, shall be read as referring to counties.

(f) Any industry or private water user, the State of North Carolina, the United States or any of its agencies, any municipality, any other county, or any other political subdivision may participate in county watershed improvement programs hereunder in the same manner and to the same extent as provided by G. S. 139-37 with respect to participation in watershed improvement district programs.

(g) The board of county commissioners may provide for county watershed improvement programs and any or all other related activities (such as water supply systems, sewerage systems, water resources programs, beach erosion control programs, and conservation programs) to be coordinated, to be jointly undertaken by two or more local agencies, or to be assigned to a single county agency designated by such name and organized in such manner as the board deems appropriate. (1959, c. 781, s. 10; 1967, c. 987, s. 10; 1969, c. 711, s. 3; 1971, c. 1138, s. 2.)

Local Modification.—Onslow: 1967, c. 725, s. 2½; Person: 1961, c. 794, s. 1½; 1967, c. 111, s. 2; Rowan: 1961, c. 794, s. 1; 1963, c. 109; Union: 1961, c. 794, s. 1½; 1963, c. 955; 1965, c. 19, s. 2.

Cross Reference.—See Editor's note to § 139-3.

Editor's Note. — The 1967 amendment substituted "soil and water conservation districts" for "soil conservation districts" and inserted the reference to subdivision (4) of § 139-8 in the first sentence of subsection (a) of this section.

Section 10 of Session Laws 1967, c. 987, provides: "It is hereby declared that the purpose of this section is to clarify the existing authority of boards of county commissioners to acquire property in connection with county watershed improvement programs. The authority expressed in this section concerning acquisition, use and disposition of property by counties under the provisions of G.S. 139-41 (a) (4) shall be considered to be in addition to the general property acquisition use and disposal powers of counties under G.S. chapter 153 or otherwise. All expenditures heretofore incurred by counties for property acquisition in connection with county watershed improvement programs are hereby validated and confirmed, as being based upon said general property acquisition powers of counties. The proceeds of any tax heretofore or hereafter approved by the voters of a county for a county watershed improvement program, or authorized by local act for a county watershed improvement program, may be expended for property acquisition in connection with such program."

The 1969 amendment added present subsection (g).

The 1971 amendment redesignated former subsections (d), (e), and (f) as present subsections (e), (f), and (g), and added present subsection (d).

Only the subsections affected by the amendments are set out.

§ 139-44. Power of eminent domain conferred on counties in certain cases.—A county which has been authorized to levy a watershed improvement tax, whether pursuant to this article or by local act or otherwise, shall have for purposes of its county watershed improvement program the powers conferred upon watershed improvement districts by G.S. 139-38 (as the same may be amended from time to time), subject to the limitations and procedures prescribed therein. For this purpose, a county shall be considered a watershed improvement district, and the board of county commissioners shall be considered the trustees of the applicant district. (1967, c. 987, s. 6.)

Cross Reference.—See Editor's note to § 139-3.

§ 139-45. Extraterritorial powers of counties. — A county which has been authorized to levy a watershed improvement tax, whether pursuant to article 3 of General Statutes 139 or by special act or otherwise, may take any authorized watershed action and may expend funds for any authorized watershed purpose (including acquisition of real and personal property, easements, options, or other interests in real property) outside as well as inside the boundaries of the county, if the board of county commissioners finds that substantial flood prevention, drainage or water supply benefits will accrue to property located within the boundaries of the county as a result of such action or expenditure. The board of county commissioners may delegate to a watershed improvement commission the function of making such findings, either generally or in a particular case. (1967, c. 987, s. 7.)

Cross Reference.—See Editor's note to § 139-3.

§ 139-46. Recreational and related aspects of watershed improvement programs.—(a) Local watershed sponsors may install and maintain recreational facilities and services in connection with watershed improvement works or projects, and may provide areas (including structures) for the conservation and replacement of fish and wildlife habitat. For any of these purposes said sponsors may appropriate and expend funds, may levy taxes and assessments, and may issue bonds and notes, to the same extent as in the case of other authorized watershed activities. Such recreational facilities and services may include but are not limited to any or all of the water-related recreational facilities provided for in subsection (b) of this section, and parking areas, ingress and egress roads, hiking or nature trails, picnic areas and campsites. No application for watershed planning under Public Law 566 (83rd Congress, United States), as amended, may be approved by the State Soil and Water Conservation Committee until after receipt and consideration of recommendations from the appropriate fish and wildlife agency concerning replacement of fish and wildlife habitat in mitigation of anticipated damages: Provided that this requirement for consideration of fish and wildlife recommendations shall not apply if such recommendations are not received by the State Committee within 30 days after the State Committee requests such recommendations. Within the meaning of this provision the "appropriate fish and wildlife agency" means the North Carolina Wildlife Resources Commission as to matters within its jurisdiction, and the North Carolina Department of Conservation and Development as to matters within its jurisdiction, or both such agencies as to matters within their concurrent jurisdiction.

(b) It is hereby declared that the provisions of this chapter authorizing works of improvement, structures, plans, surveys and investigations for the development of water resources were intended to include water-related recreational facilities, including but not limited to boat launching areas and facilities, bathhouses, campsites and picnic areas adjacent to the water, and other basic facilities for water recreational areas. All expenditures heretofore incurred by any local watershed sponsor for such water-related recreational facilities are hereby validated and confirmed. The proceeds of any tax heretofore approved by the voters of a county for a county watershed improvement program, or authorized by special or local act for a county watershed improvement program, may be expended for such water-related recreational facilities, if the board of county commissioners after a public hearing determines that the proceeds should be so expended. Notice of such hearing shall be published as provided for notices under article 2 of this chapter. No action based on the alleged invalidity of the expenditures herein confirmed or of the use of tax proceeds herein authorized shall lie after January 1, 1968 to enjoin or contest any such expenditure or any such use of tax proceeds.

(c) Within the meaning of this section "local watershed sponsors" include watershed improvement districts, soil and water conservation districts, drainage districts, municipalities, and counties undertaking county watershed programs under article 3 of this chapter or any local act granting similar powers. (1967, c. 987, s. 9.)

Cross Reference.—See Editor's note to § 139-3.

§ **139-47. Procedures to be followed in connection with watershed improvement or drainage projects that involve channelization.**—(a) As used in this section:

(1) The term "channelization" means channel excavation but does not include channel clearing and snagging work. Determinations by the Board of Water and Air Resources that a project involves channelization shall be conclusive for purposes of this section.

(2) The term "channel excavation" means the construction or enlargement of a channel by the removal and disposal of material by excavation to facilitate runoff of flood water or drainage of water.

(3) "Channel clearing and snagging" means the removal and disposal of trees, snags, drifts, boulders or other obstructions from the flow area of a natural or excavated channel.

(b) A notice of public hearing for every preliminary project investigation of the Soil Conservation Service or recommended report of the Army Corps of Engineers or any project planning report of the Tennessee Valley Authority concerning a watershed improvement project or drainage project that involves channelization shall be published in a newspaper of general circulation in the county or counties wherein any part of the project lies at least one time, not less than two weeks nor more than four weeks prior to the date of the public hearing. The notice shall include a map of the project, not less than one-fourth page in size, delineating the boundaries of the project and indicating the proposed works of improvement, including any channelization features.

(c) Following publication of the notice, the Board of Water and Air Resources (or its designee pursuant to G.S. 143-215.3(a)(4)) shall hold a public hearing in the county or counties wherein any part of the project lies to allow interested parties to be heard concerning the proposed project. The hearing shall be held pursuant to the provisions of G.S. 143-215.4(d), except that notice of the hearing shall be given as required by subsection (b) of this section. The decision of the Board shall be subject to judicial review pursuant to G.S. 143-215.5.

(d) Every preliminary project investigation or recommended report concerning a watershed improvement project or drainage project that involves channelization shall be submitted to the Board of Water and Air Resources for review and for approval or disapproval. Such review shall be prior to, and in addition to, the review of watershed work plans provided for by G.S. 139-35. The Board shall approve such investigation or report, following the public hearing held pursuant to subsection (c) of this section, if, in its judgment, the investigation or report shows that any channelization features of the proposed project are necessary to the project and that no other feasible alternatives are available. No work of improvement may be constructed or established without the approval of the preliminary project investigation or recommended report by the Board pursuant to this section. The construction or establishment of any such work of improvement without such approval, or without conforming to a preliminary project investigation or recommended report approved by the Board, may be enjoined. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina State Board of Health and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 through 130-209. The Board may institute an action for injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in such action shall be as provided in Article 37, Chapter 1 of the General Statutes. (1971, c. 1138, s. 3.)

Editor's Note. — Session Laws 1971, c. 1138, s. 5, provides: "This act shall be in full force and effect from and after its ratification. Section 3 of this act shall apply only to projects as to which a preliminary project investigation or recommended report is issued, after the effective date of this act. However, this act shall apply to any Tennessee Valley Authority project not presently under construction." The act was ratified July 21, 1971.

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1A.

State Art Museum Building Commission.

Sec.
140-5.2. Commission created; appointment of members; vacancies; chairman.
140-5.3. Powers and duties enumerated.
140-5.4. Membership on Commission not to constitute a public office.

Sec.
140-5.5. General powers.
140-5.6. Right of eminent domain.

Article 2.

State Symphony Society.

140-10.1. Exempt from certain taxes.

ARTICLE 1.

North Carolina Museum of Art.

§ 140-1. Agency of State; functions.

State Government Reorganization.—The Museum of Art was transferred to the Department of Art, Culture and History by § 143A-197, enacted by Session Laws 1971, c. 864.

ARTICLE 1A.

State Art Museum Building Commission.

§ 140-5.2. Commission created; appointment of members; vacancies; chairman.—There is hereby created the State Art Museum Building Commission, which shall consist of three persons who have served in the State Senate, to be appointed by the President of the Senate; three persons who have served in the House of Representatives, to be appointed by the Speaker of the House of Representatives; and nine persons to be appointed by the Governor. All members shall be appointed on July 1, 1967, or as soon thereafter as is practical, and shall serve until the completion of the duties assigned to the Commission. Each vacancy occurring in the membership of the Commission shall be filled by appointment of the officer authorized to make the initial appointment to the place vacated, and each appointee to fill a vacancy shall have the same qualifications prescribed by this article for the appointee whom he succeeds. The Governor shall appoint one member of the Commission to serve as chairman. (1967, c. 1142, s. 1.)

State Government Reorganization.—The State Art Museum Building Commission was transferred to the Department of Art, Culture and History by § 143A-200, enacted by Session Laws 1971, c. 864.

§ 140-5.3. Powers and duties enumerated.—The State Art Museum Building Commission shall have the following powers and duties:

(1) With the approval of the Governor and Council of State and the North Carolina State Capital Planning Commission, to determine the site for the building of the State Art Museum.

(2) To employ architects to prepare plans for the State Art Museum Building, to assist and advise the architects in the preparation of those plans, and to approve on behalf of the State all plans for the State Art Museum Building.

(3) To enter on behalf of the State into contracts for the construction of an art museum building and the employment of consultants and for the purchase of services, materials, furnishings, and equipment required in connection with the location, design, construction, furnishing, and equipping of said museum building.

(4) To supervise generally the location, construction, furnishing, equipping, renovating and care of the State Art Museum Building.

(5) To call upon the Department of Administration, the Attorney General, and any other State agency or officer for such assistance as the Commission may require in carrying out its duties.

(6) To appoint such advisory committees, composed of persons not members of the Commission, as the Commission deems necessary.

(7) To report to the General Assembly at each regular session concerning action taken by the Commission during the previous biennium in carrying out the provisions of this article, and to make such special reports as may be requested by the General Assembly or the Governor.

(8) To receive gifts of funds from foundations, corporations and individuals and to receive public funds to aid in defraying the cost of said building, and surrounding facilities including landscaping. (1967, c. 1142, s. 2; 1969, c. 545.)

Editor's Note. — The 1969 amendment deleted "on land which has been denominated as Heritage Square" at the end of subdivision (1).

§ **140-5.4. Membership on Commission not to constitute a public office.**—This Commission is hereby declared to be created for a special purpose and membership on such Commission shall not constitute a public office. (1967, c. 1142. s. 3.)

§ **140-5.5. General powers.** — This Commission shall have all powers necessary in carrying out the general purpose of this article. (1967, c. 1142, s. 4.)

§ **140-5.6. Right of eminent domain.** — In the event that this State Art Museum Building Commission should find it necessary to acquire lands, rights-of-way or easements in order to carry out the purposes of this article, and, in that event, if the Commission is unable to purchase the same from the owners thereof at an agreed price, or is unable to obtain a good and sufficient title therefor by purchase from the owners, then the Commission shall have and may exercise the right of eminent domain and may acquire any such lands, rights-of-way or easements necessary for the aforesaid purpose by condemnation in the manner prescribed in article 9 of chapter 136 of the General Statutes of North Carolina as amended. (1967, c. 1142, s. 5.)

Cited in State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

ARTICLE 2.

State Symphony Society.

§ 140-6. Trustees for North Carolina Symphony Society.

State Government Reorganization.—The Symphony Society, Inc., was transferred to the Department of Art, Culture and History by § 143A-199, enacted by Session Laws 1971, c. 864.

§ **140-10.1. Exempt from certain taxes.**—The North Carolina Symphony Society, Incorporated, shall be exempt from all privilege license and gross receipts taxes, whether imposed by article 2, schedule B, chapter 105 of the North Carolina General Statutes, or otherwise. (1969, c. 100.)

ARTICLE 3.

State Art Society.

§ 140-11. State patronage; board of directors, composition, number, appointment and terms of office.

State Government Reorganization.—The State Art Society, Inc., was transferred to the Department of Art, Culture and History by § 143A-198, enacted by Session Laws 1971, c. 864.

Chapter 140A.

State Awards System.

§ 140A-4. Awards Commission; creation; powers and duties.

State Government Reorganization.—The Awards Commission was transferred to the Department of Art, Culture and History by § 143A-209, enacted by Session Laws 1971, c. 864.

Chapter 141.

State Boundaries.

Sec.
141-7. Southern lateral seaward boundary.
141-8. Northern lateral seaward boundary.

§ 141-6. Eastern boundary of State; jurisdiction over territory within littoral waters and lands under same.—(a) The Constitution of the State of North Carolina, adopted in 1868, having provided in article I, § 34, that the "limits and boundaries of the State shall be and remain as they now are," and the eastern limit and boundary of the State of North Carolina on the Atlantic seaboard having always been, since the Treaty of Peace with Great Britain in 1783 and the Declaration of Independence of July 4th, 1776, one marine league eastward from the Atlantic seashore, measured from the extreme low water mark, the eastern boundary of the State of North Carolina is hereby declared to be fixed as it has always been at one marine league eastward from the seashore of the Atlantic Ocean bordering the State of North Carolina, measured from the extreme low water mark of the Atlantic Ocean seashore aforesaid.
(1969, c. 541, s. 1.)

Editor's Note.—

The 1969 amendment corrected the reference to the Constitution by substituting "§ 34" for "§ 31" near the beginning of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

The reference to the Constitution in this section is to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. XIV, § 2.

Quoted in State ex rel. Bruton v. Flying "W" Enterprises, Inc., 273 N.C. 399, 160 S.E.2d 482 (1968).

§ 141-7. Southern lateral seaward boundary. — The lateral seaward boundary between North Carolina and South Carolina eastward from the low-water mark of the Atlantic Ocean shall be and is hereby designated as a line beginning at the intersection of the low-water mark of the Atlantic Ocean and the existing North Carolina-South Carolina boundary line; thence by a straight line projection of the present North Carolina-South Carolina boundary line to the point where the said line intersects 33° 27′ 00″ N; thence due east on a true 90 degree bearing along 33° 27′ 00″ N latitude to the seaward jurisdictional limit of North Carolina; such boundary line to be extended on the true 90 degree bearing along 33° 27′ 00″ N latitude as far as a need for further delineation may arise. (1969, c. 842; 1971, c. 804, s. 1.)

Editor's Note.—Former § 141-7, enacted by Session Laws 1969, c. 842, provided that that section should stand repealed should the Congress of the United States not ratify, confirm, adopt or otherwise consent to the effect of the same by Nov. 1, 1970. Congress did not consent, and the section enacted in 1969 therefore stood repealed.

Session Laws 1971, c. 804, s. 2, provides: "This act shall become effective upon ratification and with approval thereof, and concurrence therein, by the State of South Carolina and upon the approval and consent to this act by the Congress of the United States."

§ 141-8. Northern lateral seaward boundary. — The lateral seaward boundary between North Carolina and Virginia eastward from the low-water mark of the Atlantic Ocean shall be and is hereby designated as a line beginning at the intersection of the low-water mark of the Atlantic Ocean and the existing North Carolina-Virginia boundary line; thence due east on a true 90 degree bearing to the seaward jurisdictional limit of North Carolina; such boundary line to be extended on the true 90 degree bearing as far as a need for further delineation may arise. (1969, c. 841; 1971, c. 452, s. 1.)

Editor's Note.—Former § 141-8, enacted by Session Laws 1969, c. 841, provided that that section should stand repealed should the Congress of the United States not ratify, confirm, adopt or otherwise consent to the effect of the same by Nov. 1, 1970. Congress did not consent, and the section enacted in 1969 therefore stood repealed.

Section 2, c. 452, Session Laws 1971, provides: "This act shall become effective upon ratification, and with approval thereof, and concurrence therein, by the General Assembly of Virginia and upon the approval and consent to this act by the Congress of the United States."

Chapter 142.

State Debt.

Article 1.

General Provisions.

Sec.
142-15.1. Lost, stolen, defaced, or destroyed State bonds.

ARTICLE 1.

General Provisions.

§ 142-6. Registration as to principal and interest.—(a) If, upon the registration of any such bond or certificate dated prior to January 1, 1965, or at any time after such registration, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be cancelled by the Treasurer, and he shall sign a statement endorsed upon such bond or certificate of the cancellation of all unmatured coupons and of the fact that such bond or certificate has been converted into a fully registered bond or certificate, and shall make like entry in the said register. Thereafter the interest evidenced by such cancelled coupons shall be paid at the time provided therein, to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the State Treasurer to pay such interest in funds current at the State capital, which request shall be entered in the said register.

(b) If, upon the registration of any such bond or certificate dated on or after January 1, 1965, or at any time after such registration, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be detached and retained in the custody of the State Treasurer, and the State Treasurer shall endorse upon such bond or certificate the fact that such bond or certificate has been converted into a fully registered bond or certificate, and shall make like entry in said register. Thereafter the interest evidenced by such detached coupons shall be paid at the times provided therein to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the State Treasurer to pay such interest in funds current at the State capital, which request shall be entered in said register. Any such bond or certificate, if converted into a bond or certificate registered as to both principal and interest. may be reconverted at the expense of the registered owner into a coupon bond or certificate upon presentation thereof to the State Treasurer, accompanied by an instrument duly executed by the registered owner or his legal representatives in such form as shall be satisfactory to the State Treasurer; upon any such reconversion the State Treasurer shall reattach thereto the coupons representing the interest to become due thereafter on such bond or certificate to the date of maturity and shall make notation upon such bond or certificate whether such bond or certificate is registered as to principal alone or is payable to bearer, and shall make like entry in said register and he shall cancel any detached coupons retained by him representing interest that has been paid. (1856, c. 16: 1883, c. 25, s. 2; Code, s. 3569; 1887, c. 287, s. 2; Rev., s. 5026; C. S., s. 7406; Ex. Sess. 1921, c. 66, s. 5; 1965, c. 181, s. 1.)

Editor's Note. — The 1965 amendment designated the former provisions of the section as subsection (a) and added subsection (b). The amendment also substituted "dated prior to January 1, 1965, or at any time after such registration" for "or at any time thereafter" near the beginning of present subsection (a) and added "or certificate" twice near the end of the first sentence in that subsection.

§ 142-8. Application of §§ 142-1 to 142-9.—Sections 142-1 to 142-9, both inclusive, as amended, shall be applicable to all bonds or certificates of the State heretofore issued and now outstanding, and to all bonds or certificates of the State that may hereafter be issued in accordance with any law now in force or hereafter to be enacted. (Code, s. 3570; 1887, c. 287, s. 3; Rev., s. 5028; C. S., s. 7408; Ex. Sess. 1921, c. 66, s. 7; 1965, c. 181, s. 2.)

Editor's Note. — The 1965 amendment eliminated "by chapter 66 of the Public Laws of the extra session of 1921" following "as amended" near the beginning of the section.

§ 142-15.1. Lost, stolen, defaced, or destroyed State bonds.—(a) If lost, stolen, or completely destroyed, any State bond, note, or coupon may be reissued in the same form and tenor upon the owner's furnishing to the satisfaction of the State Treasurer:

(1) Proof of ownership,
(2) Proof of loss or destruction,
(3) A surety bond in twice the face amount of bond or note and coupon, and
(4) Payment of the cost of preparing and issuing the new bond, note, or coupon.

(b) If defaced or partially destroyed, any State bond, note, or coupon may be reissued in the same form and tenor to the bearer or registered holder, at his expense, upon surrender of the defaced or partially destroyed bond, note, or coupon and on such other conditions as the State Treasurer may prescribe. The State Treasurer may also provide for authentication of defaced or partially destroyed bonds, notes, or coupons instead of reissuing them.

(c) Each new State bond, note, or coupon issued under this section shall be signed by the State Treasurer and shall contain a recital to the effect that it is issued in exchange for or replacement of a certain bond, note, or coupon (decribing it sufficiently to identify it) and is to be deemed a part of the same issue as the original bond, note, or coupon.

(d) Before taking action under this section to replace, exchange, or authenticate a State bond, note, or coupon, the State Treasurer shall obtain the advice and consent of the Council of State. (1971, c. 780, s. 36.)

Editor's Note.—Session Laws 1971, c. 780, s. 36, makes the act effective July 1, 1973.

ARTICLE 6.

Citations to Bond and Note Acts.

53. State Capital Improvement Act of 1959. 1959, c. 1039; 1965, c. 1201.
59. Capital Improvement Legislative Bond Act of 1965. 1965, c. 915.

Cross Reference.—
For list of highway bond acts, see chapter 136, art. 8.

Cited in Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966) (subdivision 58).

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

Sec.

143-18.1. Increase or decrease of projects within capital improvement appropriations; requesting authorization of capital projects not specifically provided for

143-34.2. Information as to requests for nonstate funds for projects imposing obligation on State; statement of participation in contracts, etc., for nonstate funds.

143-34.3. Non - State - Personnel - Act employee salary schedule to be furnished General Assembly.

143-34.4. Legislative fiscal research staff participation.

Article 2.

State Personnel Department.

143-35 to 143-47. [Repealed.]

Article 2A.

Incentive Award Program for State Employees.

143-47.1 to 143-47.5. [Repealed.]

Article 3.

Purchases and Contracts.

143-48. Purpose and implementation.

143-49. Powers and duties of Director.

143-50. Certain contractual powers exercised by other departments transferred to Director.

143-51. Reports to Director required of all agencies as to needs.

143-52. Competitive bidding procedure; consolidation of estimates by Director; bids; awarding of contracts.

143-52.1. [Repealed.]

143-53. Rules and regulations.

143-54. Certification that bids were submitted without collusion.

143-55. Requisitioning for supplies by agencies; must purchase through sources certified.

143-56. Certain purchases excepted from provisions of Article.

143-57. Purchases of articles in certain emergencies.

143-58. Contracts contrary to provisions of Article made void.

143-59. Preference given to North Carolina products and citizens, and articles manufactured by State agencies.

Sec.

143-60. Rules and regulations covering certain purposes.

143-61. Standardization Committee.

143-62. Law applicable to printing Supreme Court Reports not affected.

143-63. Financial interest of officers in sources of supply; acceptance of bribes.

143-64. [Repealed.]

Article 7.

Inmates of State Institutions to Pay Costs.

143-118.1. Governing board may compromise account.

143-126.1. Lien on patient's property for unpaid balance due institution.

143-127.1. Parental liability for payment of cost of care for long-term patients in State Department of Mental Health facilities.

Article 8.

Public Building Contracts.

143-134. Applicable to State Highway Commission and Department of Correction; exceptions.

143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.

143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims.

143-135.4. Authority of Purchase and Contract Division of Department of Administration not repealed.

Article 9.

Building Code Council and Building Code.

143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing laboratory.

143-143.1. [Repealed.]

143-143.2. Electric wiring of houses.

Article 9A.

Uniform Standards Code for Mobile Homes.

143-144. Short title.

143-145. Definitions.

Sec.
143-146. Statement of policy; rule-making power.
143-147. Approval and licensing of persons and inspection departments.
143-148. Compliance with the Commissioner's rules.
143-149. Necessity for obtaining label or certificate for purposes of sale.
143-150. No electricity to be furnished units not in compliance.
143-151. Penalties.
143-151.1. Enforcement.

Article 12.

Law-Enforcement Officers' Benefit and Retirement Fund.

143-166. Law-Enforcement Officers' Benefit and Retirement Fund.

Article 12A.

Law-Enforcement Officers' Death Benefit Act.

143-166.7. Applicability of article.

Article 14.

North Carolina Zoological Authority.

143-171. Creation of Zoological Authority.
143-172. Board of Directors.
143-173. Advisory Board.
143-174. Site committee.
143-175. Powers of the Board.
143-176. Executive committee.
143-176.1. Zoo Director.
143-177. Right to receive gifts.
143-177.1. North Carolina Zoological Garden Fund.
143-177.2. Cities and counties.
143-177.3. Sources of funds.

Article 20.

Recreation Commission.

143-205 to 143-210.1. [Repealed.]

Article 21.

Department of Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

143-211. Declaration of public policy.
143-212. Department of Water and Air Resources created.
143-213. Definitions.
143-214. Board of Water and Air Resources.
143-214.1. Water; water quality standards and classifications; duties of Board.
143-215. Air quality standards and classifications.

Sec.
143-215.1. Control of new sources of air and water pollution; permits required.
143-215.2. Abatement of existing pollution; required compliance with special orders.
143-215.3. General powers of Board; auxiliary powers.
143-215.4. General provisions as to procedure; seal.
143-215.5. Judicial review.
143-215.6. Violations and penalties; acts which constitute violations.
143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.
143-215.8. Injunctive relief.
143-215.9. Restrictions on authority of the Board.
143-215.10. Transfer of all powers and duties of Department of Water Resources, including personnel and records of the Board; title of article.

Part 2. Regulation of Use of Water Resources.

143-215.11. Short title.
143-215.12. Declaration of purpose.
143-215.13. Declaration of capacity use areas.
143-215.14. Regulations within capacity use areas; scope and procedures.
143-215.15. Permits for water use within capacity use areas — procedures.
143-215.16. Permits for water use within capacity use areas — duration, transfer, reporting, measurement, present use, fees and penalties.
143-215.17. Violations.
143-215.18. Map or description of boundaries of capacity use areas.
143-215.19. Rights of investigation, entry, access and inspection.
143-215.20. Rules and regulations.
143-215.21. Definitions.
143-215.22. Law of riparian rights not changed.

Part 3. Dam Safety Law.

143-215.23. Short title.
143-215.24. Declaration of purpose.
143-215.25. Definitions.
143-215.26. Construction of dams.
143-215.27. Repair, alteration, or removal of dam.
143-215.28. Action by Board upon applications.

Sec.

143-215.29. Supervision by qualified engineers; reports and modification during work.
143-215.30. Notice of completion; certification of final approval.
143-215.31. Supervision over maintenance and operation of dams.
143-215.32. Inspection of dams.
143-215.33. Judicial review.
143-215.34. Investigations by Department; rules and regulations, employment of consultants
143-215.35. Liability for damages.
143-215.36. Violations; penalties.
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143-215.39. Public policy.
143-215.40. Resolutions and ordinances assuring local cooperation.
143-215.41. Items of cooperation to which localities and the State may bind themselves.
143-215.42. Acquisition of lands.
143-215.43. Additional powers.

Part 5. Right of Withdrawal of Impounded Water.

143-215.44. Right of withdrawal.
143-215.45. Transfer of right of withdrawal.
143-215.46. Exercise of right of withdrawal.
143-215.47. Effect of right of withdrawal on discharges of water.
143-215.48. Determining streamflows.
143-215.49. Right of withdrawal for use in community water supply.
143-215.50. Interpretation with other statutes.

Part 6. Floodway Regulation.

143-215.51. Preamble.
143-215.52. Definitions.
143-215.53. Artificial obstruction prohibited.
143-215.54. Floodway uses.
143-215.55. Existing artificial obstructions.
143-215.56. Delineation of floodway; powers of Board of Water and Air Resources; powers of local governments.
143-215.57. Procedures in issuing permits.
143-215.58. Violations and penalties.
143-215.59. Other approvals required.
143-215.60. Liability for damages.
143-215.61. Flood plain management.

Part 6A. Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund.

Sec.

143-215.62. Revolving fund established; conditions and procedures.

Part 7. Water and Air Quality Reporting.

143-215.63. Short title.
143-215.64. Purpose.
143-215.65. Reports required.
143-215.66. Monitoring required.
143-215.67. Acceptance of wastes to disposal systems and air cleaning devices.
143-215.68. Rules and regulations.
143-215.69. Penalties.

Article 22.

State Ports Authority.

143-224. Jurisdiction of the Authority; application of chapter 20; appointment and authority of special police.

Article 23A.

Stadium Authority.

143-236.2 to 143-236.28. [Repealed.]

Article 24.

Wildlife Resources Commission.

143-247.1. Commission may accept gifts.
143-252. Article subject to chapter 113

Article 29B.

Governor's Coordinating Council on Aging.

143-283.11. Council created; ex officio and nongovernment members; chairman.
143-283.12. Terms of nongovernment members; vacancies.
143-283.13. Quorum; meetings; attendance by deputies.
143-283.14. Reimbursement for expenses
143-283.15. Council placed in Department of Administration.
143-283.16. Executive Director.
143-283.17. Staff and consultants.
143-283.18. Advisory subcommittees.
143-283.19. General duties of Council.
143-283.20. Establishment of demonstration programs.
143-283.21. State agency to handle federal aging programs.
143-283.22. Biennial reports.
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Article 29C.

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143-283.24. Short title.

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143-283.25. Declaration of purpose.
143-283.26. Definitions.
143-283.27. The Advisory Board.
143-283.28. The State Youth Council.
143-283.29. Local youth councils.
143-283.30. The executive secretary.
143-283.31. No State funds.
143-283.32. Reports.
143-283.33 to 143-283.40. [Reserved.]

Article 29D.

Manpower Council.

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143-283.42. Definitions.
143-283.43. Council established.
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143-283.45. Functions.
143-283.46. Administrator; functions.
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143-283.48. Cooperative Area Manpower Planning System Committee.

Article 30.

John H. Kerr Reservoir Development Commission.

143-286. Powers and duties generally; employees as special peace officers; rules and regulations; penalty for violation.

Article 31.

Tort Claims against State Departments and Agencies.

143-293. Appeals to Court of Appeals.
143-294. Appeal to Court of Appeals to act as supersedeas.

Article 31A.

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143-300.2. Definitions.
143-300.3. Defense of State employees.
143-300.4. Grounds for refusal of defense.
143-300.5. Regulations for providing defense counsel.

Article 33.

Judicial Review of Decisions of Certain Administrative Agencies.

143-316. Appeal to appellate division; obtaining stay of court's decision.

Article 33A.

Rules of Evidence in Administrative Proceedings before State Agencies.

143-317. Definitions.
143-318. Rules of evidence official notice.

Article 33B.

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143-318.1. Public policy.
143-318.2. All official meetings open to the public.
143-318.3. Executive, closed and private sessions.
143-318.4. Exceptions.
143-318.5. Advisory Budget Commission and appropriation committees of General Assembly; application of Article.
143-318.6. Mandamus and injunctive relief.
143-318.7. Disruptions.

Article 34.

North Carolina Department of Local Affairs.

143-319. Department established.
143-320. Definitions.
143-321. Structure and organization of Department.
143-322. Functions of Director.
143-323. Functions of Department.
143-324. Functions of Advisory Council.
143-325. Functions of committees.
143-326. Transfer of functions, records, property, etc.
143-327. Short title.

Article 36.

Department of Administration.

143-343. Rules and regulations.
143-344. Disorderly conduct in and injury to public buildings and grounds.
143-345. Construction and repair of public buildings; use of Contingency and Emergency Fund.
143-345.1. Moore and Nash squares and other public lots.
143-345.2. Program for location and construction of future public buildings.

Article 37A.

Marine Science Council.

143-347.1. Council created.
143-347.2. Membership; terms; expenses.
143-347.3. Rules of procedure; meetings; cooperation of other agencies.
143-347.4. Duties and responsibilities.
143-347.5. Director of Department of Administration to furnish staff and financial support.

Article 38.

Department of Water Resources.

143-348, 143-349. [Repealed.]
143-351. [Repealed.]
143-353. [Repealed.]

Article 39A.

Frying Pan Lightship Marine Museum Commission.

143-369.1. Commission created; members; appointment; terms; vacancies; chairman.
143-369.2. Conveyance of "Frying Pan" lightship to Commission.
143-369.3. Powers of Commission.

Article 41.

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143-375. Administration by Board of Science and Technology.

Article 42.

Board of Science and Technology.

Article 43.

North Carolina Seashore Commission.

143-384 to 143-391. [Repealed.]

Article 44.

North Carolina Traffic Safety Authority.

143-392. Authority created; members.
143-393. Duties.
143-394. Meetings.
143-395. Authority not to exercise powers or duties of other departments or agencies.

Article 45.

North Carolina American Revolution Bicentennial Commission.

143-396. Commission established; members, terms, vacancies, etc.
143-397. Duties.
143-398. Travel and subsistence expenses.
143-399. Allotments from Contingency and Emergency Fund.

Article 46.

Governor's Committee on Law and Order.

143-400 to 143-402.2. [Repealed.]

Article 47.

North Carolina Arts Council.

143-403. Council created; appointment of members.
143-404. Terms of office; vacancies; compensation; meetings; Council placed within Department of Administration.
143-405. Executive director and other personnel.
143-406. Duties of Council.
143-407. Appropriations; funds.
143-408. Appointees holding office, etc., under United States or State government.

Article 48.

Executive Mansion Fine Arts Commission.

Sec.
143-409. Commission created; appointment and terms of members; vacancies; chairman; ex officio members.
143-410. Purpose.
143-411. Powers.
143-412. Compensation.
143-413. Duty of Director of State Department of Archives and History.
143-414. Unexpended funds and assets.
143-415. Authority, etc., of Department of Administration not affected.

Article 49.

North Carolina Human Relations Commission.

143-416. North Carolina Human Relations Commission created; membership; chairman and vice-chairman.
143-417. Duties of Commission.
143-418. Director.
143-419. Headquarters; meetings; other officers.
143-420. Salaries; allowances.
143-421. Advisory committee.
143-422. Transfer of funds and property.

Article 50.

Commission on the Education and Employment of Women.

143-423. Declaration of policy.
143-424. Commission continued; composition; appointment and terms of members.
143-425. Officers; rules and regulations; quorum.
143-426. Duties generally.
143-427. Reports to General Assembly.
143-428. Members to serve without compensation; subsistence and travel expenses.

Article 51.

Tobacco Museum Board.

143-429. Tobacco Museum Board created.
143-430. Officers; quorum.
143-431. Tobacco museums.
143-432. Location of museums.

Article 51A.

Tax Study Commission.

143-433. Tax Study Commission created.
143-433.1. Duties of Commission.
143-433.2. Organization of Commission.

Sec.
143-433.3. Members to serve without compensation; subsistence and travel expenses.
143-433.4. Assistance to the Commission.
143-433.5. Reports to Governor and General Assembly.

Article 52.

Pesticides Board.

Part 1. Pesticide Control Program: Organization and Functions.

143-434. Short title.
143-435. Preamble.
143-436. North Carolina Pesticide Board; creation and organization.
143-437. Pesticide Board; functions.
143-438. Commissioner of Agriculture to administer and enforce Article.
143-439. Pesticide Advisory Committee; creation and functions.

Part 2. Regulation of the Use of Pesticides.

143-440. Restricted-use pesticides regulated.
143-441. Handling, storage and disposal of pesticides.
143-442. Registration.
143-443. Miscellaneous prohibited acts.
143-444. Determinations.
143-445. Exemptions.
143-446. Samples; submissions.
143-447. Emergency suspensions; seizures.

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143-448. Licensing of pesticide dealers; fees.
143-449. Qualifications for pesticide dealer license; examinations.
143-450. Employees of pesticide dealers; dealer's responsibility.
143-451. Denial, suspension, revocation of license.

Part 4. Pesticide Applicators and Consultants.

143-452. Licensing of pesticide applicators; fees.
143-453. Qualifications for pesticide applicator's license; examinations.
143-454. Solicitors, salesmen and operators; applicator's responsibility.
Sec.
143-455. Pest-control consultant license.
143-456. Denial, suspension, revocation of license.
143-457. Damaged person must file report of loss; contents; time for filing; effect of failure to file.
143-458. Rules and regulations concerning methods of application.
143-459. Reporting of shipments and volumes of pesticides.

Part 5. General Provisions.

143-460. Definitions.
143-461. General powers of Board.
143-462. Procedures for revocations and related actions affecting licenses.
143-463. Procedures for adoption of certain rules and regulations; publication of rules and regulations.
143-464. Procedures with respect to registration of pesticides and certain other matters; mailing list; seal; judicial review.
143-465. Reciprocity; intergovernmental cooperation.
143-466. Records; information; inspection; enforcement.
143-467. Financial responsibility.
143-468. Disposition of fees.
143-469. Penalties.
143-470. Provisional or interim licenses.

Article 53.

North Carolina Drug Authority.

143-471. Authority established.
143-472. Drug Authority; organization.
143-473. Drug Authority; function.
143-474. Director of the Drug Authority; duties.
143-475. Short title.

Article 54.

North Carolina Council on State Goals and Policy Act.

143-476. Short title.
143-477. Council established.
143-478. Definition.
143-479. Organization of the Council.
143-480. Powers and duties.
143-481. The staff of the Council.
143-482. Information.

ARTICLE 1.

Executive Budget Act.

§ **143-2. Purposes.**—It is the purpose of this Article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget. The purpose of this Article is to include within the powers of the Budget Bureau all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Budget Bureau in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise.

Notwithstanding the general language in this Article the expenditure of funds by or under the supervision and control of the State Auditor and the State Treasurer for their respective departments shall not, except as provided in G.S. 143-25, be subject to the powers of the Director of the Budget or the Department of Administration, it being intended that the State Auditor and the State Treasurer shall be independent of any fiscal control exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, s. 2.)

Editor's Note.—

This section is set out to correct a doublet in the last paragraph in the replacement volume.

§ 143-3. Examination of officers and agencies; disbursements.—The Director shall have power to examine under oath any officer or any head, any clerk or employee, of any department, institution, bureau, division, board, commission, corporation, association, or any agency; to cause the attendance of all such persons, requiring such persons to furnish any and all information desired relating to the affairs of such agency; to compel the production of books, papers, accounts, or other documents in the possession or under the control of such person so required to attend. The Director or his authorized representative shall have the right and the power to examine any State institution or agency, board, bureau, division, commission, corporation, person, and to inspect its property, and inquire into the method of operation and management.

The Director shall have power to have the books and accounts of any of such agencies or persons audited, and supervise generally the budget accounts of such departments, institutions and agencies within the terms of this article. The Director may require that the cost of making all audits shall be paid from the regular maintenance appropriation made by the General Assembly for such department, institution or agency which may be thus audited.

It shall be the duty of the Director to recommend to the General Assembly at each session such changes in the organization, management and general conduct of the various departments, institutions and other agencies of the State, and included within the terms of this article, as in his judgment will promote the more efficient and economical operation and management thereof.

The Director of the Budget under the provisions of the Executive Budget Act shall prescribe the manner in which disbursements of the several institutions and departments shall be made and may require that all warrants, vouchers or checks, except those drawn by the State Auditor and the State Treasurer, shall bear two signatures of such officers as will be designated by the Director of the Budget. (1925, c. 89, s. 3; 1929, c. 100, s. 3; c. 337, s. 4; 1969, c. 458, s. 3.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote the second paragraph.

§ 143-3.2. Issuance of warrants upon State Treasurer.—Upon the transfer of functions from the Auditor's office to the Director of the Budget, as provided in § 143-3.1, the Director of the Budget shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer; and to carry out this responsibility the Director shall designate a State Disbursing Officer whose duties shall be performed as a function of the Department of Administration. All warrants upon the State Treasurer shall be signed by the State Disbursing Officer, who before issuing same shall determine the legality of payment and the correctness of the accounts; provided that the State Auditor and the State Treasurer shall have the exclusive authority to issue all warrants for the operation of their respective department and such warrants shall be paid by the State Treasurer from the appropriations provided therefor; and provided further, that when considered expedient, due to its size or location, a State agency may upon approval of the Director of the Budget make expenditures through a disbursing account with the State Treasurer. All deposits in such disbursing accounts shall be by the State Disbursing Officer's warrant, and a copy of each voucher making withdrawals from such disbursing accounts, together with such supporting data as may be required by the Director of the Budget, shall be forwarded to the Department of Administration monthly or otherwise as may be required by the Director of the Budget; provided, however, that a central payroll unit operating under the Department of Administration may make deposits and withdrawals directly to and from a disbursing account which shall constitute a revolving fund for servicing payrolls passed through such central payroll unit. The State Disbursing Officer is authorized to use a facsimile signature machine in affixing his signature to warrants. The Director of the Budget shall secure insurance and/or a bond in an amount of not less than twenty-five thousand dollars ($25,000) to protect the State of North Carolina against any misuse or unauthorized use of the facsimile signature machine by any person. It is further required that the State Disbursing Officer shall be placed under an official bond in a penal sum to be fixed by the Governor and Advisory Budget Commission at not less than fifty thousand dollars ($50,000). Such official bond shall be a bond with corporate surety and furnished by a company admitted to do business in the State, and the premiums will be paid by the State out of the appropriations to the Department of Administration. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1955, c. 578, s. 2; 1957, c. 269, s. 2; 1961, c. 1194; 1969, c. 844, s. 12.)

Editor's Note.—

The 1969 amendment added the last sentence.

§ 143-6. Information from departments and agencies asking State aid.—On or before the first day of September biennially, in the even numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall, before making any such request for State financial aid, submit to the Department of Administration a statement of its needs in terms of space and other physical requirements, and shall furnish the Department with such additional information as it may request The Department of Administration shall then prepare preliminary studies and cost estimates for the use of the requesting department, bureau, division, officer, board commission, institution, or other State agency or undertaking in presenting its request to the Director of the Budget. (1925, c. 89, s. 6; 1929, c. 100, s. 6; 1957. c. 584 s. 4; 1965, c. 310, s. 4.)

Editor's Note.—

The 1965 amendment, effective July 1. 1965, deleted the former second paragraph providing that the Attorney General should furnish the information, etc., desired in reference to the Judicial Department.

§ 143-8. Statements of State Disbursing Officer as to legislative expenditures.—On or before the first day of September, biennially, in the even-numbered years, the State Disbursing Officer shall furnish the Director a detailed statement of expenditures of the General Assembly for the current fiscal biennium, and an estimate of its financial needs, itemized in accordance with the budget classification adopted by the Director and approved and certified by the President pro tempore of the Senate and the Speaker of the House for each year of the ensuing biennium, beginning with the first day of July thereafter; and a detailed statement of expenditures of the judiciary and any other institution or commission that may be requested by the Director for each year of the current fiscal biennium, and upon such request by the Director an estimate of its financial needs as provided by law, itemized in accordance with the budget classification adopted by the Director for each year of the ensuing biennium, beginning with the first day of July thereafter. The State Disbursing Officer shall transmit to the Director with these estimates an explanation of all increases or decreases. These estimates and accompanying explanations shall be included in the budget by the Director with such recommendations as the Director may desire to make in reference thereto. (1925, c. 89, s. 8; 1929, c. 100, s. 8; 1961, c. 1181, s. 1; 1971, c. 1200, s. 7.)

Editor's Note.—

The 1971 amendment substituted "President pro tempore of the Senate and the Speaker of the House" for "presiding officer of each House" in the first sentence.

§ 143-18.1. Increase or decrease of projects within capital improvement appropriations; requesting authorization of capital projects not specifically provided for.—The Director of the Budget and the Advisory Budget Commission may, upon the request of the administration of a State agency or institution when, in their opinion, it is in the best interest of the State to do so, increase or decrease the costs and scope of a capital improvement project within the appropriation made to that State agency or institution within the capital improvement appropriation to that agency or institution for that biennium.

The Director of the Budget and the Advisory Budget Commission may when, in their opinion, it is in the best interest of the State to do so and upon the request of the administration of any State agency or institution authorize the construction of a capital improvement project not specifically provided for or authorized by the General Assembly when funds become available by gifts or grants. All expenditures under this authorization shall be handled in full compliance with the provisions of the Executive Budget Act.

The agency shall support its request for such capital improvement project, or projects, with the following information: The estimated annual operating costs for (i) utilities; (ii) maintenance; (iii) repairs; (iv) additional personnel; (v) any and all other expenses to the State resulting from the addition of this facility to the plant of the institution. (1965, c. 841, s. 1.)

§ 143-22. Surveys, studies and examinations of departments and institutions.—The Director is hereby given full power and authority to make such surveys, studies, examinations of departments, institutions and agencies of this State, as well as its problems, so as to determine whether there may be an overlapping in the performance of the duties of the several departments and institutions and agencies of the State, and to make surveys, examinations and inquiries into the matter of the various activities of the State, and to survey, appraise, examine and inspect and determine the true condition of all property of the State, and what may be necessary to protect it against fire hazard, deterioration, and to conserve its use for State purposes, and to make and issue and to enforce all necessary, needful or convenient rules and regulations for the enforcement of this article. (1925, c. 89, s. 26; 1929, c. 100, s. 23; 1969, c. 458, s. 2.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, deleted, near the middle of the section, "and for the purpose of determining whether the proper system of modern accounting is had in such departments, institutions, commissions and agencies and to require and direct the installation of the same whenever, in his opinion, it is necessary and proper in order to acquire and to secure a perfect correlated and control system in the accounting of all departments, institutions, commissions, divisions, and State agencies including every department or agency handling or expending State funds." The amendment also deleted the former second sentence, requiring auditing systems to be administered by the Auditor.

§ 143-23. All maintenance funds for itemized purposes; transfers between objects and items.

Transfer of Funds within School Appropriations for Transportation Lawful.— See opinion of Attorney General to Mr. Thomas J. White, Chairman, Advisory Budget Commission, 6/8/70.

Cited in Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

§ 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects.—It shall be the duty and responsibility of the Director of the Budget to determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Division of Property Control of the Department of Administration to be favorable to the letting of construction contracts. (1953, c. 1090; 1963, c. 423.)

Editor's Note.—

This section is set out in the supplement to correct an error appearing in the replacement volume.

§ 143-34.2. Information as to requests for nonstate funds for projects imposing obligation on State; statement of participation in contracts, etc., for nonstate funds.—All State agencies, funds, or state-supported institutions shall submit to the Department of Administration, as of the original date thereof, copies of all applications and requests for nonstate funds, (including federal funds), to be used for any purpose to which this section is applicable. This section shall be applicable to all projects and programs which do or may impose upon the State of North Carolina any substantial financial obligation at the time of or subsequent to the acceptance of any funds received upon any such application or request. Every State agency, fund or state-supported institution seeking nonstate funds for any such project or program shall furnish to the Department of Administration and the Advisory Budget Commission with each such copy of application or request, a statement of the purposes for which any such project or program is desired or advocated, the source and amount of funds to be granted or provided therefor, and a statement of the conditions, if any, upon which such funds are to be provided.

It shall be required of all State agencies, funds, or state-supported institutions. commissions or regional planning and development bodies to submit to the Department of Administration a statement of participation in any contract, agreement, plan or request for nonstate funds (including federal funds). (1965, c. 1181; 1969, c. 1210.)

Editor's Note.—The 1969 amendment added the second paragraph.

§ 143-34.3. Non-State-Personnel-Act employee salary schedule to be furnished General Assembly.—(a) Any salary for an existing position or increase of salary for a State employee who is not subject to the State Personnel Act and whose salary is fixed by the Governor and Advisory Budget Commission shall not become effective unless submitted to the General Assembly of North Carolina pursuant to subsection (b).

(b) The State Budget Officer shall file with the principal clerk of each House of the General Assembly, while the General Assembly is in session, certified copies of a listing containing all non-State-Personnel-Act positions or additional positions to be filled for which the salary is fixed by the Governor and the Advisory Budget Commission, the salary paid to the occupant of that position during the preceding year and the salary proposed to be paid to the occupant of that position during each year of the ensuing biennium. The listing for existing positions for the 1971-73 biennium shall be filed not later than five days after July 2, 1971, and shall not become effective until approved by the 1971 General Assembly. For subsequent bienniums, the listing shall be filed not later than 30 days after the General Assembly convenes but shall not require any action before becoming effective. (1971, c. 728.)

Cross Reference.—As to applicability of this section, see §§ 143A-9, 143A-10.

§ 143-34.4. Legislative fiscal research staff participation. — Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State. The Legislative Services Officer shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Commission. The Legislative Services Officer shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Commission; these reports, memoranda and materials shall be delivered to the Legislative Services Officer at the same time that they are distributed to the members of the Commission. (1971, c. 659, s. 2.)

Editor's Note.—Session Laws 1971, c. 659, s. 4, makes the act effective July 1, 1971.

ARTICLE 2.

State Personnel Department.

§§ 143-35 to 143-47: Repealed by Session Laws 1965, c. 640, s. 1, effective July 1, 1965.

Editor's Note.—Session Laws 1965, c. 640, s. 1, effective July 1, 1965, repealed this article and article 2A of this chapter, and repealed and rewrote chapter 126. This article was codified from Session Laws 1949, c. 718, as amended by Session Laws 1949, c. 1174; 1953, cc. 675, 1085; 1957 cc. 269, 541, 1004, 1349, 1447; 1961, cc. 536, 625, 833; 1963, cc. 958 1177. For present provisions as to the State Personnel System, see §§ 126-1 to 126-12.

ARTICLE 2A.

Incentive Award Program for State Employees.

§§ **143-47.1 to 143-47.5**: Repealed by Session Laws 1965, c. 640, s. 1, effective July 1, 1965.

Editor's Note.—Session Laws 1965, c. 640, s. 1, effective July 1, 1965, repealed this article and article 2 of this chapter, and repealed and rewrote chapter 126. This article was codified from Session Laws 1963, c. 1047. For present provisions as to State Personnel System, see §§ 126-1 to 126-12.

ARTICLE 3.

Purchases and Contracts.

§ **143-48. Purpose and implementation.**—The purpose of this Article is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Purchase and Contract Division of the Department of Administration. (1931, c. 261, s. 1; c. 396; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

Revision of Article.—Session Laws 1971, c. 587, effective July 1, 1971, revised and rewrote this Article, substituting present §§ 143-48 to 143-63 for former §§ 143-48 to 143-64. No attempt has been made to point out the changes effected by the 1971 act, but, where appropriate, the historical citations to the former sections have been added to corresponding sections of the new Article.

State Government Reorganization.—The Purchase and Contract Division remains in the Department of Administration under § 143A-82, enacted by Session Laws 1971, c. 864.

§ **143-49. Powers and duties of Director.**—The Director of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided.

(2) To establish and enforce specifications which shall apply to all supplies, materials and equipment to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies; to provide for transfer or exchange to or between all State departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies; the duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.

(5) To make provision for or to contract for all State printing, including all printing, binding, paper stock and supplies or materials in connection with the same.

(6) To make available to nonprofit corporations operating charitable hospitals, and to counties, cities, towns, governmental entities and other subdivi-

sions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Advisory Budget Commission may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1.)

Opinions of Attorney General. — Mr. J.C. Eagles, Jr., Vice Chancellor, Finance, University of North Carolina, 10/22/69.

§ **143-50. Certain contractual powers exercised by other departments transferred to Director.**—All rights, powers, duties and authority relating to State printing, or to the acquisition of supplies, materials, equipment, and contractual services, now imposed upon or exercised by any State department, institution or agency under the several statutes relating thereto, are hereby transferred to the Director of Administration and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Director of Administration under the provisions of this Article. (1931, c. 261, s. 3; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ **143-51. Reports to Director required of all agencies as to needs.**—It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Director of Administration when requested, and on forms to be prescribed by him, estimates of all supplies, materials and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Director of Administration. (1931, c. 261, s. 4; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ **143-52. Competitive bidding procedure; consolidation of estimates by Director; bids; awarding of contracts.**—As feasible, the Director of Administration will compile and consolidate all such estimates of supplies, materials and equipment needed and required by State departments, institutions and agencies to determine the total requirements for any given commodity. Where such total requirements will involve an expenditure in excess of two thousand five hundred dollars ($2,500) and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Director of Administration, with the approval of the Advisory Budget Commission, when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Director of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Director of Administration with the approval of the Advisory Budget Commission, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Director of Administration. After contracts have been awarded, the Director of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

Opinions of Attorney General. — Mr. R.D. McMillan, State Purchasing Officer, Department of Purchase & Contract, 10/10/69.

Public Bidding Requirements Not to Be Dispensed with.—See opinion of Attorney General to Mr. R.D. McMillan, Jr., State Purchasing Officer, Department of Administration, 8/3/70.

§ **143-52.1**: Repealed by Session Laws 1971, c. 587, s. 1, effective July 1, 1971.

Revision of Article.—See same catchline under § 143-48.

§ **143-53. Rules and regulations.** — The Advisory Budget Commission shall have the necessary authority to adopt rules and regulations governing the following:

(1) Designating personnel and prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing routine for securing bids on items that do not exceed two thousand five hundred dollars ($2,500) in value.

(3) Defining contractual services for the purposes of G.S. 143-49(3).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Adopting any other rules and regulations to carry out the duties and purpose of this Article.

The purpose of rules and regulations promulgated hereunder shall be to promote sound purchasing management; and prior to adoption, they shall be submitted to the Attorney General for opinion as to the legal effect thereof. Such rules and regulations shall become effective upon filing with the Secretary of State. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ **143-54. Certification that bids were submitted without collusion.**—The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. False certification shall be punishable as in cases of perjury. (1961, c. 963; 1971, c. 587, s. 1.)

§ **143-55. Requisitioning for supplies by agencies; must purchase through sources certified.**—After sources of supply have been established by contract and certified by the Director of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Director of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Director of Administration. One copy of such requisition or order shall be furnished to and when requested by the Director of Administration. (1931, c. 261, s. 6; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ **143-56. Certain purchases excepted from provisions of Article.**—Except as may otherwise be ordered by the Director of Administration, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Director of Administration shall not be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Director of Administration with the approval of the Advisory Budget Commission.

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Director of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review. (1931, c. 261, s. 7; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ **143-57. Purchases of articles in certain emergencies.**—In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Director of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. (1931, c. 261, s. 8; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ 143-58. Contracts contrary to provisions of Article made void.—If any department, institution or agency of the State government, required by this Article and the rules and regulations adopted pursuant thereto applying to the purchase or lease of supplies, materials, equipment, printing or services through the Director of Administration, or any nonstate institution, agency or instrumentality duly authorized or required to make purchases through the Department of Administration, shall contract for the purchase or lease of such supplies, materials, or equipment contrary to the provisions of this Article or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such State or nonstate department, institution, agency or instrumentality purchases any supplies, materials, or equipment contrary to the provisions of this Article or the rules and regulations made hereunder, the executive officer of such department, institution, agency or instrumentality shall be personally liable for the costs thereof. (1931, c. 261, s. 9; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ 143-59. Preference given to North Carolina products and citizens, and articles manufactured by State agencies.—The Director of Administration and any State agency authorized to purchase foodstuff or other products, shall in the purchase of or in the contracting for foods, supplies, materials, equipment, printing or services give preference as far as may be practicable to such products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and Provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution. (1931, c. 261, s. 10; 1933, c. 441, s. 2; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ 143-60. Rules and regulations covering certain purposes. — The Director of Administration, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this Article:

(1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.
(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.
(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications.
(4) Prescribing the manner in which purchases shall be made in emergencies.
(5) Providing for such other matters as may be necessary to give effect to the foregoing rules and provisions of this Article.

Further, the Director of Administration, with the approval of the Advisory Budget Commission, may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772; 1971, c. 587, s. 1.)

§ 143-61. Standardization Committee.—It shall be the duty of the Governor to appoint a Standardization Committee to serve at the pleasure of the Governor and to consist of seven members as follows: the Director of Administration, who shall be chairman of said Committee; an engineer from the State Highway Commission to be appointed by the Governor upon the recommendation of the chairman of the State Highway Commission; a representative of State or local educational agencies to be appointed by the Governor; a representative of the State departments to be appointed by the Governor; a representative of the State charitable and correctional institutions to be appointed by the Governor; and two members of the Advisory Budget Commission to be designated by the Governor. Four members of said Committee shall constitute a quorum for the transaction of business, or the performance of any duties imposed upon the Committee by this Article. The Committee shall meet at such time, or times, as it shall by rule or regulation prescribe, but it may meet at other times at the call of the chairman. The Committee shall keep official minutes and such minutes shall be open to public inspection. It shall be the duty of the Standardization Committee to review, adopt, establish and/or modify standard specifications wherever feasible applying to articles purchased or leased. In the adoption or modification of any specifications, the Standardization Committee shall seek the advice, assistance and cooperation of any State department, institution or agency to ascertain its precise requirements in any given commodity. Each specification adopted for any commodity shall insofar as practicable satisfy the requirements of the majority of the State departments, institutions or agencies which use the same in common. After its adoption, each standard specification shall, until revised or rescinded, apply alike in terms and effect to every State purchase of the commodity described in such specifications: Provided, however, that interim modifications may be made by the Director of Administration between formally adopted revisions. In the preparation of specifications the Standardization Committee shall have power to make use of any State laboratory with or without charge for tests in making determination of quality. (1931, c. 261, s. 12; 1957, c. 65, s. 11; c. 269, s. 3; 1971, c. 587, s. 1.)

§ **143-62. Law applicable to printing Supreme Court Reports not affected.** — Nothing in this Article shall be construed as amending or repealing G.S. 7A-6(b), relating to the printing of the Supreme Court reports, or in any way changing or interfering with the method of printing or contracting for the printing of the Supreme Court Reports as provided for in said section. (1931, c. 261, s. 13; 1969, c. 44, s. 75; 1971, c. 587, s. 1.)

§ **143-63. Financial interest of officers in sources of supply; acceptance of bribes.**—Neither the Director of Administration, nor any assistant of his, nor any member of the Advisory Budget Commission, nor of the Standardization Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Director, assistant, or member of the Commission or Committee accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Director, assistant or member of the Commission or Committee shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3; 1971, c. 587, s. 1.)

§ **143-64:** Repealed by Session Laws 1971, c. 587, s. 1, effective July 1, 1971.

Revision of Article.—See same catchline under § 143-48.

Article 3A.

State Agency for Surplus Property.

§ **143-64.1. Department of Administration designated State agency for surplus property.**

State Government Reorganization.—The State agency for surplus property remains in the Department of Administration under § 143A-82, enacted by Session Laws 1971, c. 864.

§ **143-64.2. Authority and duties of the State agency for surplus property.**—(a) The State agency for surplus property is hereby authorized and empowered

(1) To acquire from the United States of America such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational purposes, public health purposes, or civil defense purposes, including research;

(2) To warehouse such property; and

(3) To distribute such property to tax-supported or nonprofit and tax-exempt (under Section 501(c) (3) of the United States Internal Revenue Code of 1954) medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, civil defense organizations, and such other eligible donees within the State as are permitted to receive surplus property of the United States of America under the Federal Property and Administrative Services Act of 1949, as amended.

(1965, c. 1105, ss. 1, 2.)

Editor's Note. — The 1965 amendment substituted "public health purposes, or civil defense purposes" for "or public health purposes" in subdivision (1) of subsection (a), and rewrote subdivision (3) of that subsection.

As only subsection (a) was affected by the amendment, the rest of the section is not set out.

§ **143-64.4. Warehousing, transfer, etc., charges.**—The State agency for surplus property is hereby authorized and empowered to assess and collect service charges or fees for the acquisition, receipts, warehousing, distribution or transfer of any property acquired by donation from the United States of America for educational purposes, public health purposes, public libraries or civil defense purposes, including research, and any such charges made or fees assessed shall be limited to those reasonably related to the costs of care and handling in respect to the acquisition, receipts, warehousing, distribution or transfer of the property by the State agency for surplus property. (1953, c. 1262, s. 4; 1965, c. 1105, s. 3.)

Editor's Note. — The 1965 amendment rewrote this section.

Article 7.

Inmates of State Institutions to Pay Costs.

§ **143-117. Institutions included.**—All persons admitted to Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, John Umstead Hospital, Murdoch School, O'Berry School, Caswell School at Kinston, Western Carolina Center, the School for the Deaf at Morganton, the alcoholic rehabilitation centers which are now or hereafter may be authorized, North Carolina Sanatorium at

McCain, Western North Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill, North Carolina are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions. (1925, c. 120, s. 1; 1949, c. 1070; 1957, c. 1232, s. 29; 1959, c. 1028, ss. 1-7; 1967, c. 188, s. 1; c. 834, s. 1; 1969, c. 20; c. 837, s. 4; 1971, c. 469.)

Editor's Note.—

The first 1967 amendment inserted "Western Carolina Center." Section 2 of c. 188, Session Laws 1967, provides: "This act shall be applicable to all those persons now or hereafter residents at the Western Carolina Center and to those whose accounts are now due and owing."

The second 1967 amendment inserted in the list of institutions "the alcoholic rehabilitation centers which are now or hereafter may be authorized." Section 3 of c. 834, Session Laws 1967, provides that it shall apply "as to all those persons now or hereafter residents at the alcoholic rehabilitation centers as well as those which accounts are now due and owing." Chapter 834 was ratified June 20, 1967, and was made effective upon ratification.

The first 1969 amendment substituted "North Carolina Sanatorium at McCain, Western North Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill, North Carolina" for "and the North Carolina Sanatorium for the Treatment of Tuberculosis at Sanatorium."

The second 1969 amendment substituted "Samarkand Manor" for "State Home and Industrial School for Girls at Samarcand."

The 1971 amendment deleted "Stonewall Jackson Training School for Boys at Concord, the Samarkand Manor, the East Carolina Training School at Rocky Mount, the Morrison Training School for Negro Boys in Richmond County" following "Western Carolina Center."

Cited in Graham v. Reserve Life Ins. Co., 274 N.C. 115, 161 S.E.2d 485 (1968); State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

§ 143-118. Governing board to fix cost and charges.

Cited in State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

§ 143-118.1. Governing board may compromise account.—The respective boards of trustees or directors of each of said institutions, by whatever name they may be called, or the North Carolina Board of Mental Health or the agent of these said boards, to whom this power has been delegated by resolution of the respective boards, are hereby empowered to enter into contracts of compromise of accounts owing the said institutions for past, present or future care at the said institutions, including but not limited to the authority to enter into a contract to charge nothing, which contract shall be binding on the respective institution under the terms and for the period specified in such contract. The rate of charge fixed by such contract shall be paid on a monthly basis, or in lump sum for those amounts already accrued for the duration of the contract; said rates or decision to make no charge shall be determined in the discretion of the board or their agents by the ability to pay of the patient or those responsible in law for his support. In any action by any of the said institutions for the recovery of the cost of the care, maintenance and treatment of any inmate, a verified and itemized statement of account accompanied by a contract entered into pursuant to this section shall have the same effect in instituting a prima facie case as the statement of account filed pursuant to G.S. 143-118 This section shall not be construed as mandatory and if such contract is not entered into or shall terminate, or if the obligor shall default in the payment of the said compromise amount or any installment thereof, then the full monthly charge shall accrue on the patient's account. (1967, c. 958.)

§ 143-121. Action to recover costs.

When Action to Be Instituted.—An action under this section to recover for treatment and maintenance of an incompetent at a State hospital need not be instituted while the patient is receiving such treatment and maintenance, but may be brought after the patient has left the State hospital, the State not being relegated after the patient leaves the hospital to an action under § 143-126 against the patient's estate. State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

It would be a strained and limited construction of this section to hold that, once the patient is discharged from a State institution, a civil action for treatment and maintenance may not be instituted until after the patient's death. Such a construction would be improper and manifestly unjust to the State and the taxpayers. State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

Funds for Future Support Need Not Be Set Aside Prior to Recovery.—In an action under this section to recover for treatment and maintenance of an incompetent at a State hospital, it is not required that sufficient funds be set aside and retained by the incompetent for his future support and maintenance and for that of members of his family who are dependent upon him before the State is entitled to recovery. State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

Nonindigent Insane Persons Required to Pay Actual Costs.—There is no provision in the Constitution requiring or authorizing the General Assembly to provide for the care, treatment, or maintenance of nonindigent insane persons at the expense of the State. The General Assembly has at all times by appropriate statutes required such persons to pay at least the actual cost of their care, treatment, and maintenance, while they are patients in State institutions. State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

§ 143-126. Death of inmate; lien on estate.—(a) In the event of the death of any inmate, pupil or patient of either of said institutions above named, leaving any such cost of care, maintenance, training and treatment unpaid, in whole or in part, then such unpaid cost shall constitute a first lien on all the property, both real and personal, of the said decedent, subject only to the payment of funeral expenses and taxes to the State of North Carolina.

(b) Upon the death of a patient, the Board of Mental Health or their duly authorized agents shall file a statement containing the following:

(1) The name of the patient;
(2) The date of the patient's death;
(3) The inclusive dates of hospitalization;
(4) The name of the hospital or hospitals providing care; and
(5) The amount of the unpaid balance as evidenced by a certified statement of account. Such statement shall be filed in the office of the clerk of the superior court in the county of residence of the deceased patient and may be filed in the county or counties in which real property is located in which the deceased patient owns an interest. The statement shall be filed and indexed by the clerk.

(c) From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned in whole or in part by the deceased patient and lying in such county to the extent of the total amount of the unpaid balance for the patient's support and maintenance as evidenced by the certified statement of account. Payments made by a fiduciary including those made by a clerk of superior court, in full or partial satisfaction of such lien, shall constitute a valid expenditure as provided in G.S. 143-119.

(d) No action to enforce such lien may be brought more than three years from the date of death of the patient. The failure to bring such action or the failure of the Board or its duly authorized agents to file such statement shall not be a complete bar against recovery but shall only extinguish the lien and priority thereby established.

(e) Upon receipt of the unpaid balance by the State institution or Board or upon agreement of compromise of such unpaid balance, the Board of Mental Health or its duly authorized agents shall notify the clerks of superior court who shall have recorded the lien and shall indicate that such unpaid balance has been paid and the clerks shall cancel the lien of record. (1925, c. 120, s. 10; 1967, c. 960.)

Cross Reference.—See note to § 143-121.

Editor's Note. — The 1967 amendment designated the former provisions of the section as subsection (a) and added subsections (b), (c), (d) and (e).

§ 143-126.1. Lien on patient's property for unpaid balance due institution.—(a) There is hereby created a general lien, enforceable as hereinafter provided, on both the real and personal property of any person who is receiving or who has received care and maintenance in any of the State institutions listed in G.S. 143-117, to the extent of the total amount of the unpaid balance shown on the certified statement of account for charges from and after July 1, 1967.

(b) Such general lien for the unpaid balance for care and maintenance at the aforementioned hospitals shall apply alike to the property, both real and personal, of the patient whether held by the patient or a trustee or guardian of the patient.

(c) At a time deemed suitable in the discretion of the Board of Mental Health or its duly authorized agents, there may be filed a statement containing the following:

(1) The name of the patient;
(2) The inclusive dates of hospitalization and a statement that hospitalization is continuing if such is applicable;
(3) The name of the hospital or hospitals providing care; and
(4) The amount of the unpaid balance as evidenced by a certified statement of account.

Such statement may be filed in the office of the clerk of superior court in the county of residence of the patient and in each county or counties in which the patient owns an interest. The statement shall be filed and indexed by the clerk.

(d) From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the patient and lying in such county to the extent of the total amount of the unpaid balance for the patient's support and maintenance as evidenced by the certified statement of account for charges from and after July 1, 1967. Payments made by a fiduciary, including those made by a clerk of superior court, in full or partial satisfaction of such lien, shall constitute a valid expenditure as provided in G.S. 143-119.

(e) The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied. No action to enforce such lien may be brought more than three years from the last date of filing of such lien nor more than three years after the death of any patient. The failure to bring such action or the failure of the Board or its agents to file said statement shall not be a complete bar against recovery but shall only extinguish the lien and priority thereby established.

(f) Upon receipt of the full unpaid balance by the State institution or Board of Mental Health or upon agreement of compromise of such unpaid balance, the Board of Mental Health or its duly authorized agents shall notify the clerks of superior court who have recorded a lien and shall indicate that such unpaid balance has been paid and the clerks shall cancel the lien of record. (1967, c. 959.)

Opinions of Attorney General. — Mr. Emmett L. Sellers, Director, Division of Medical Services, State Department of Social Services, 9/4/69.

§ 143-127. Money paid into State treasury.

Cited in State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

§ 143-127.1. Parental liability for payment of cost of care for long-term patients in State Department of Mental Health facilities.—(a) Notwithstanding the foregoing provisions of G.S. 143-117 through G.S. 143-127 inclusive, the natural or adoptive parents of persons who are long-term patients at facilities owned or operated by the State Department of Mental Health shall only be liable on the charges made by such facility for treatment, care and maintenance for an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the State Department of Mental Health.

(b) Parents or adoptive parents of a long-term patient in a facility owned or operated by the State Department of Mental Health shall not be liable for any charges made by such facility for treatment, care and maintenance of such a patient incurred or accrued subsequent to such patient attaining age 21.

(c) For purposes of this section the term "long-term patient" is defined as a person who has been a patient in a facility owned or operated by the State Department of Mental Health for a continuous period in excess of 120 days. No absence of a patient from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the 120 days herein required to attain the status of a long-term patient. (1971, c. 218, s. 1.)

Editor's Note. — Session Laws 1971, c. 218, s. 4, as amended by Session Laws 1971, c. 1142, provides: "This act is intended to relieve and shall be construed to relieve, any parent of any liability for charges accrued prior to the ratification of this act for treatment, care and maintenance of a natural or adoptive child at facilities owned or operated by the State Department of Mental Health. It is the intent of this act to limit the existing liability of all parents, in the manner set out in the previous sections of this act, in regard to charges made prior to the date of the ratification of this act, or to be made subsequent to such date, for treatment, care and maintenance of a natural or adopted child at facilities owned or operated by the State Department of Mental Health."

ARTICLE 8.

Public Building Contracts.

§ 143-128. Separate specifications for building contracts; responsible contractors.—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction or altering of buildings for the State, or for any county or municipality, when the entire cost of such work shall exceed twenty thousand dollars ($20,000.00), must have prepared separate specifications for each of the following branches of work to be performed:

(1) Heating, ventilating and/or air conditioning and accessories separately or combined into one conductive system.
(2) Plumbing and gas fittings and accessories.
(3) Electrical installations.
(4) Refrigeration for cold storage where the cooling load is 15 tons or more of refrigeration.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the State or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction or alterations of buildings, or any parts thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision is less than two thousand five hundred ($2,500.00), the same may be included in one of the several other contracts, irrespective of total project cost.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording, "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the State, or with any county or municipality, for the erection, construction or alteration of any building or buildings, or parts thereof. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860.)

Editor's Note.—

The 1967 amendment rewrote subdivisions (1) and (4), substituted "fittings" for "fitting" in subdivision (2), deleted a proviso relating to heating, ventilating and air conditioning at the end of the first sentence of the next-to-last paragraph, substituted "two thousand five hundred ($2,500.00)" for "one thousand dollars ($1,000.00)" in the last sentence of the next-to-last paragraph, made certain minor changes in wording in the next-to-last paragraph and added "or parts thereof" at the end of the last paragraph.

The second paragraph of this note in the replacement volume should read: "The 1945 amendment added the last paragraph."

Separate Contracts Required of Counties in Certain Circumstances.—See opinion of Attorney General to Mr. William L. Mills, Jr., Cabarrus County Attorney, 5/22/70.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.—No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ten thousand dollars ($10,000.00) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars ($2,500.00), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond, and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a general misdemeanor.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond in some surety company authorized to do business in the State or require a deposit of money, certified check or government securities for the full amount of said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of government for which the work is to be performed until the contract has been carried out in all respects: Provided, that in the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for the deposit of a surety bond or securities as required herein.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivision of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or of any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article.

The Director of the Department of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847.)

Local Modification.—Mecklenburg: 1969, c. 279; city of Charlotte: 1967, c. 92; city of Durham: 1969, cc. 428, 1233; city of Gastonia: 1969, c. 328; city of Greensboro: 1969, c. 142.

Editor's Note.—

The 1965 amendment inserted "upon recommendation of the Department of Administration, and" in the second sentence of the seventh paragraph and deleted "without making any substantial changes in the plans and specifications" near the end of that sentence.

The 1967 amendment substituted "seven thousand five hundred dollars ($7,500.00)" for "three thousand five hundred dollars ($3,500.00)" in the first paragraph and for "three thousand dollars ($3,000.00)" in two places in the former proviso in the fourth paragraph, added "except under provisions of this article" at the end of the sixth paragraph, rewrote the first four sentences of the former seventh paragraph as the present seventh paragraph, inserted "or a cashier's check" in the first sentence of the present eighth paragraph, substituted "Department of Administration" for "Budget Bureau" near the beginning of the present eleventh paragraph, substituted "any other section of this article" for "G.S. 143-131" at the end of the present thirteenth paragraph, inserted "of the Department" near the beginning of the present fourteenth paragraph and made minor changes in wording throughout the section.

The 1971 amendment substituted "ten thousand dollars ($10,000.00)" for "seven thousand five hundred dollars ($7,500.00)" and substituted "two thousand five hundred dollars ($2,500.00)" for "two thousand dollars ($2,000.00)" in the first paragraph and deleted, at the end of the fourth paragraph, a proviso as to publication or posting of notice where there is no newspaper published in the county, city, town or other subdivision and the amount of the contract is less than $7,500.

Opinions of Attorney General. — Mr. L.A. Stith, Craven County Attorney, 10/8/69; Mr. James B. Garland, Gastonia City Attorney, 10/16/69.

Sales Tax Must Be Included as an "Estimated Expenditure of Public Money".—See opinion of Attorney General to Mr. James B. Garland, 41 N.C.A.G. 479 (1971).

Contract Made in Violation, etc.—

A purported public contract not made in conformity with the requirements of this section is void. Nello L. Teer Co. v. North Carolina State Highway Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

But Contractor May Recover, etc.—

Hawkins v. Dallas, cited under this catchline in the replacement volume, is reported in 229 N.C. at p. 561.

Performance and acceptance of construction work imposes an obligation to pay the reasonable and just value of the work done and materials furnished. Nello L. Teer Co. v. North Carolina State Highway Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

Such recovery excludes profits, and the reasonable and just value recoverable cannot exceed actual cost. Nello L. Teer Co. v. North Carolina State Highway Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

Modification of Bid after Opening of Sealed Bids Impermissible.—See opinion of Attorney General to Mr. John B. Lewis, Farmville Town Attorney, 12/8/70.

Applied in North Carolina Monroe Constr. Co. v. Guilford County Bd. of Educ., 278 N.C. 633, 180 S.E.2d 818 (1971).

Cited in Smith v. City of Rockingham, 268 N.C. 697, 151 S.E.2d 568 (1966); Wm. Muirhead Constr. Co. v. Housing Authority, 1 N.C. App. 181, 160 S.E.2d 542 (1968).

§ 143-130. Allowance for convict labor must be specified.—In cases where the board or governing body of a State agency or of any political subdivision of the State may furnish convict or other labor to the contractor, manufacturer, or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2; 1967, c. 860.)

Editor's Note. — The 1967 amendment inserted "of a State agency or of any political subdivision of the State" near the beginning of the section.

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.—All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of one thousand dollars ($1,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593.)

Local Modification.—City of Durham: 1969, c. 1233.

Editor's Note.—

The 1967 amendment substituted "contract" for "contracts" in the last sentence.

The 1971 amendment substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500.00)" in the first sentence.

§ 143-132. Minimum number of bids for public contracts.—No contracts to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement. not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860.)

Editor's Note.—

The 1967 amendment substituted "lines" for "line" and deleted "when the estimated cost of the project exceeds the sum of twenty thousand dollars ($20,000.00)" in the part of the first sentence preceding the semicolon and substituted "agency" for "institution" near the middle of the second sentence.

Session Laws 1969, c. 541, s. 2, purported to correct an error in this section as it appeared in the 1964 replacement volume by substituting a reference to § 143-129 for a reference to § 143-120. The error had already been corrected in the 1967 amendatory act.

Receipt of "No Bid" Notes Not a Bid within Requirement of Receipt of Certain Number of Bids.—See opinion of Attorney General to Mr. Thomas S. Harrington, Eden City Attorney, 5/25/70.

§ **143-133. No evasion permitted.**—No bill or contract shall be divided for the purpose of evading the provisions of this article. (1933, c. 400, s. 3; 1967, c. 860.)

Editor's Note. — The 1967 amendment reenacted this section without change.

§ **143-134. Applicable to State Highway Commission and Department of Correction; exceptions.**—This article shall apply to the State Highway Commission and the Department of Correction except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the State Highway Commission or by the Department of Correction can be done more economically through use of employees of the State Highway Commission, and/or prison inmates than by letting such repair or building construction to contract, the provisions of this article shall not apply to such repair or construction. (1933, c. 400, s. 3-A; 1955, c. 572; 1957, c. 65, s. 11; 1967, c. 860; c. 996, s. 13.)

Editor's Note.—

The first 1967 amendment inserted "or by the Prison Department" near the middle of the section.

The second 1967 amendment, effective Aug. 1, 1967, substituted "Department of Correction" for "Prison Department" twice in the section.

§ **143-134.1. Interest on final payments due to prime contractors.**—On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except the construction of roads, highways, bridges and their approaches, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of six percent (6%) per annum on such unpaid balance as may be due. Funds for payment of such interest on State-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. (1959, c. 1328; 1967, c. 860.)

Editor's Note. — The 1967 amendment inserted "engineer" and substituted "purpose" for "purposes" in the first sentence.

§ 143-135. Limitation of application of article.—This article shall not apply to the State or to subdivisions of the State of North Carolina in the expenditure of public funds when the total cost of any repairs, completed project, building, or structure shall not exceed the sum of twenty-five thousand dollars ($25,000.00), if the repairs completed project, building, or structure are performed or accomplished by or through duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned; provided, that such force account work shall be subject to the approval of the Director of the Department of Administration in the case of State agencies, or approval of the responsible commission, council or board in the case of subdivisions of the State. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c 1104, s. 6; 1967, c. 860.)

Local Modification.—Mecklenburg: 1967, c. 298; city of Belmont: 1967, c. 419; city of Gastonia: 1967, c. 392.

Editor's Note.—

The 1967 amendment substituted "twenty-five thousand dollars ($25,000.00)" for "fifteen thousand dollars ($15,000 00)" and added "using force account qualified labor on the permanent payroll of the agency concerned" and the proviso at the end of the section.

§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.—Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements. Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of Administration, and any and all recommendations made by them shall be given consideration by the Department of Administration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the Department of Administration. (1951, c. 1104, s. 4; 1967, c. 860; 1971, c. 563.)

Editor's Note. — The 1971 amendment rewrote this section as amended by the 1967 amendment. Prior to the 1971 amendment the section did not refer to county authorities or counties.

§ 143-135.2. Contracts for restoration of historic buildings with private donations.—This article shall not apply to building contracts let by a State agency for restoration of a historic building or structure where the funds for the restoration of such building or structure are provided entirely by funds donated from private sources. (1955. c. 27; 1967, c. 860.)

Editor's Note. — The 1967 amendment substituted "funds for" for "cost of" and "are" for "is" and deleted "for such purposes" formerly appearing at the end of the section.

§ 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims.—Upon completion of any contract for construction or repair work awarded by any State board to any contractor, under the provisions of this article, should the contractor fail to receive such settlement as he claims to be entitled to under terms of his contract, he may, within 60 days from the time of receiving written notice as to the disposition to be made of his claim, submit to the Director of the Department of Administration a written and verified claim for such amount as he deems himself entitled to under the terms of said contract, setting forth the facts upon which said claim is based. In addition, the claimant, either in person or through counsel, may appear before the Director of the Department of Administration and present any additional facts and arguments in support of his claim. Within 90 days from the receipt of the said written claim, the Director of the Department of Administration shall make an investigation of the claim and may allow all or any part or may deny said claim and shall have the authority to reach a compromise agreement with the contractor and shall notify the contractor in writing of his decision.

As to such portion of the claim which may be denied by the Director of the Department of Administration, the contractor may, within six months from receipt of the decision, institute a civil action for such sum as he claims to be entitled to under said contract by the filing of a verified complaint and issuance of summons in the Superior Court of Wake County or in the superior court of any county wherein the work under said contract was performed. The procedure shall be the same as in all civil actions except as herein and as hereinafter set out.

All issues of law and fact and every other issue shall be tried by the judge, without jury; provided that the matter may be referred in the instances and in the manner provided for in article 20 of chapter 1 of the General Statutes.

The submission of the claim to the Director of the Department of Administration within the time set out in this section and the filing of an action in the superior court within the time set out in this section shall be a condition precedent to bringing an action under this section and shall not be a statute of limitations.

The provisions of this section shall be deemed to enter into and form a part of every contract entered into between any board of the State and any contractor, and no provision in said contracts shall be valid that is in conflict herewith.

The word "board" as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State.

"A contract for construction or repair work," as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration enters into contracts. (1965, c. 1022; 1967, c. 860; 1969, c. 950, s. 1.)

Editor's Note. — The 1967 amendment rewrote this section, which was formerly divided into seven subsections.

The 1969 amendment added at the end of the section the language beginning "as well as any contract for the construction of airport runways."

Session Laws 1969, c. 950, s. 1-A, provides that the act shall not apply to pending litigation.

Cited in Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

§ 143-135.4. Authority of Purchase and Contract Division of Department of Administration not repealed.—Nothing contained in this article shall be construed as contravening or repealing any authorities given by statute to the Purchase and Contract Division of the Department of Administration. (1967, c. 860.)

ARTICLE 9.

Building Code Council and Building Code.

§ 143-136. Building Code Council created; membership.—(a) Creation; Membership; Terms.—There is hereby created a Building Code Council, which shall be composed of 11 members appointed by the Governor, consisting of one registered architect, one licensed general contractor, one registered architect or licensed general contractor specializing in residential design or construction, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal or county building inspector, a representative of the public who is not a member of the building construction industry, a licensed electrical contractor, and a registered engineer on the engineering staff of a State agency charged with approval of plans of state-owned buildings. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above-named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above. (1965, c. 1145; 1969, c. 1229, s. 1; 1971, c. 323.)

Editor's Note.—

The 1965 amendment added "Neither the architect nor any of the above-named engineers shall be engaged in the manufacture, promotion or sale of any building material, and" at the beginning of the last sentence in the first paragraph of subsection (a).

The 1969 amendment substituted "ten" for "nine," inserted "one registered architect or licensed general contractor specializing in residential design or construction" and "or county" and substituted "registered engineer on" for "representative of," all in the first sentence of subsection (a).

The 1971 amendment substituted "11" for "ten" and inserted "a licensed electrical contractor" in the first sentence of subsection (a).

As subsection (b) was not affected by the amendments, it is not set out.

State Government Reorganization.—The Building Code Council was transferred to the Department of Insurance by § 143A-78, enacted by Session Laws 1971, c. 864.

§ 143-138. North Carolina State Building Code.

(b) Contents of the Code.—The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; regulations governing construction and precautions to be taken during construction; regulations as to permissible materials, loads, and stresses; regulations of chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; regulations governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules and regulations pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building regulations applicable to farm buildings located outside the building-regulation jurisdiction of any municipality.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000.00), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any boiler regulations adopted by the Board of Boiler Rules,
(2) Any elevator regulations relating to safe operation adopted by the Commissioner of Labor, and
(3) Any regulations relating to sanitation adopted by the State Board of Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other regulations of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No regulations issued by other agencies than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

(c) Standards to Be Followed in Adopting the Code.—All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed liberally to those ends. Requirements of the Code shall conform to good engineering practice, as evidenced generally by the requirements of the National Building Code of the American Insurance Association, formerly the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Life Safety Code, formerly Building Exits Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the American Insurance Association for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the United States of America Standards Institute, formerly the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(e) Effect upon Local Building Codes.—The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a building code or building rules and regulations governing construction within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality; county jurisdiction shall include all other areas of the county. No such building code or regulations shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. While it remains effective, such approval shall be taken as conclusive evidence that a local code or local regulations supersede the State Building Code in its particular political subdivision. Whenever the Building Code Council adopts an amendment to the State Building Code, it shall consider any previously approved local regulations dealing with the same general matters, and it shall have authority to withdraw its approval of any such local code or regulations unless the local governing body makes such appropriate amendments to that local code or regulations as it may direct. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local codes and regulations shall have no force and effect.

(g) Publication and Distribution of Code.—The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council).

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	3
State Board of Education	2
Attorney General	5
Commissioner of Agriculture	1
Commissioner of Labor	3
Commissioner of Insurance	5
State Board of Health	10
Medical Care Commission	3
State Highway Commission	3
Adjutant General	1
Utilities Commission	1
Department of Administration	3
Department of Conservation and Development	3
State Board of Public Welfare	7
Justices of the Supreme Court	1 each
Clerk of the Supreme Court	1
Judges of the Court of Appeals	1 each
Clerk of the Court of Appeals	1
Judges of the Superior Court	* 1 each
Emergency Judges of the Superior Court	* 1 each
Special Judges of the Superior Court	* 1 each
Solicitors of the Superior Court	* 1 each
State Library	2
Supreme Court Library	2
State Senators	* 1 each
Representatives of General Assembly	* 1 each
Other state-supported institutions, at the discretion of the Council	* 1 each
Schools	
University of North Carolina at Chapel Hill	*25
North Carolina State University at Raleigh	*15
North Carolina Agricultural and Technical State University	* 5
All other state-supported colleges and universities in the State of North Carolina	* 1 each

OFFICIAL OR AGENCY	NUMBER OF COPIES
Local Officials	
Clerks of the Superior Courts	1 each
Registers of Deeds of the Counties	* 1 each
Chairmen of the Boards of County Commissioners	* 1 each
City Clerk of each incorporated municipality	1 each
Chief Building Inspector of each incorporated municipality or county	* 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public.

(h) Violations.—Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code shall be guilty of a misdemeanor and shall upon conviction be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. In case any building or structure is erected, constructed or reconstructed, or its purpose altered, so that it becomes in violation of the North Carolina State Building Code, either the local enforcement officer or the State Commissioner of Insurance or other State official with responsibility under G.S. 143-139 may, in addition to other remedies, institute any appropriate action or proceedings (i) to prevent such unlawful erection, construction or reconstruction, or alteration of purpose, (ii) to restrain, correct, or abate such violation, or (iii) to prevent the occupancy or use of said building, structure, or land until such violation is corrected. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2.)

Editor's Note.—The first 1969 amendment inserted "requirements concerning means of ingress in buildings" in the first paragraph of subsection (b).

The second 1969 amendment deleted a reference to the National Electric Code in the first paragraph of subsection (b), inserted "within its jurisdiction as defined in subsection (e) below" in the former proviso in the second paragraph of subsection (b), substituted "building-regulation jurisdiction" for "corporate limits" in the present third paragraph of subsection (b), inserted "the American Insurance Association, formerly," "Life Safety Code, formerly," and "the United States of America Standards Institute, formerly" in subsection (c) and substituted, in subsection (c), "American Insurance Association" for "National Board of Fire Underwriters." The amendment also rewrote subsection (e), changed the table in subsection (g) and added the last sentence of subsection (h).

The 1971 amendment, effective Jan. 1, 1972, in subsection (b), inserted "and structures" and "or structure" throughout the subsection, deleted a proviso following the word "State" near the beginning of the second paragraph, deleted a former third paragraph, inserted "(1)" in the last paragraph, and added the language following "liquid fertilizers" in that paragraph. The amendment also deleted "a special or local act of" preceding "the General Assembly" in the third sentence of subsection (e).

Session Laws 1971, c. 1100, s. 3, provides: "Provided that nothing in this act shall in any way apply to any type of farm building."

By virtue of Session Laws 1943, c. 170, "State Commissioner of Insurance" has been substituted for "State Insurance Commissioner" in subsection (h).

By virtue of Session Laws 1969, c. 982, "State Board of Public Welfare" shall be construed to mean "State Board of Social Services."

Only the subsections changed by the amendments are set out.

Opinions of Attorney General. — Mr. F.E. Wallace, Jr., Kinston City Attorney, 10/7/69.

Police Power Authorizes Establishment of Standards for Buildings.—It is within the police power of the General Assembly and of a city, when authorized, to establish minimum standards, materials, designs, and construction of buildings for the safety of the occupants, their neighbors, and the public at large. State v. Walker, 265 N.C. 482, 144 S.E.2d 419 (1965); Walker v. City of Charlotte, 276 N.C. 166, 171 S.E.2d 431 (1970).

For the purpose of protecting life, health, safety and welfare, the General Assembly has power to promulgate rules, fix minimum standards, prescribe materials and designs for buildings and other structures so long as they are not arbitrary, capricious or unreasonable and so long as they tend to promote health, safety and welfare. In these matters, property rights must yield to the proper exercise of the police power. Walker v. City of Charlotte, 276 N.C. 166, 171 S.E.2d 431 (1970).

Unattended Gasoline Pumps Not within Regulation of State Building Code.—See opinion of Attorney General to Mr. Thomas B. Griffin, 41 N.C.A.G. 282 (1971).

Applied in Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

§ **143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing laboratory.** — The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest which might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code. (1971, c. 1099.)

§ **143-143.1**: Repealed by Session Laws 1971, c. 882, s. 1, effective July 1, 1971.

§ **143-143.2. Electric wiring of houses.**—The electric wiring of houses or buildings for lighting or for other purposes shall conform to the requirements of the State Building Code, which includes the National Electric Code and any amendments and supplements thereto as adopted and approved by the State Building Code Council, and any other applicable State and local laws. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for use in any newly erected building to be turned on without first having had an inspection made of the wiring by the appropriate official Electrical Inspector or Inspection Department and having received from that Inspector or Department a certificate approving the wiring of such building. It shall be unlawful for any person, firm, or corporation engaged in the business of selling electricity to furnish initially any electric current for use in any building, unless said building shall have first been inspected by the appropriate official Electrical Inspector or Inspection Department and a certificate given as above provided. In the event that there is no legally appointed Inspector or Inspection Department with jurisdiction over the property involved, the two preceding sentences shall have no force or effect. (1905, c. 506, s. 23; Rev., s. 3001; C. S., s. 2763; 1969, c. 1229, s. 7.)

Editor's Note.—Session Laws 1969, c. 1229, s. 7, repealed former § 160-141, relating to electric wiring of houses, and substituted the above section therefor.

ARTICLE 9A.

Uniform Standards Code for Mobile Homes.

§ **143-144. Short title.**—This article shall be known and may be cited as "The Uniform Standards Code for Mobile Homes Act." (1969, c. 961, s. 1.)

Editor's Note.—Session Laws 1969, c. 961, s. 7, makes the act effective July 1, 1969.

Former §§ 143-144 to 143-151 were repealed by Session Laws 1959, c. 683, s. 6.

§ **143-145. Definitions.**—Unless clearly indicated otherwise by context, the following words when used in this Article, for the purpose of this Article, shall have the meanings respectively ascribed to them in this section:

(1) "Certificate of compliance" means a certificate issued by an inspection department approved and licensed by the Council as being competent which certificate shall be valid only within the jurisiction of the inspection department and on which certificate shall be recorded:
  a. The inspection department issuing such certificate;
  b. The date of issue;
  c. The serial or other identification number of such mobile home and the name of the manufacturer;
  d. A certification that such mobile home was on the day of inspection so opened that its entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;
  e. A certification that said mobile home complies in full with the standards and rules and regulations prescribed in this Article.

(2) "Commissioner" means the Commissioner of Insurance of the State of North Carolina.

(3) "Competent" shall mean competent to technically evaluate, test, and inspect in accordance with the standards, rules and regulations prescribed in this Article: The structural features, the plumbing, heating, electrical and air-conditioning systems and the materials used in the construction of a mobile home.

(4) "Council" means the North Carolina State Building Code Council.

(5) "Inspection department" means a North Carolina city or county building inspection department authorized by Chapter 160 or Chapter 153 of the General Statutes.

(6) "Label of compliance" shall mean a permanent label or seal permanently attached to a mobile home at completion of construction thereof which is issued by any independent, solvent, and trustworthy person approved and licensed by the Council as being competent and as having and utilizing initial and follow-up manufacturing inspection services which provide the highest degree of quality control, and on which seal or label shall be recorded:
  a. The person issuing such label or seal and the serial number of the label or seal;
  b. The serial or other identification number of said mobile home;
  c. A certification that said mobile home was evaluated, tested, and inspected in accordance with the standards and rules and regulations prescribed in this Article.

(7) "Mobile home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. As used in this Article, mobile home also means a double wide mobile home which is two or more portable manufactured housing units designed for transportation on their own chassis, which connect on site for placement on a temporary or semi-

permanent foundation having a measurement of over 32 feet in length and over eight feet in width.

(8) "Person" means any corporation, partnership, association, voluntary organization or governmental agency of the United States or any state therein and does not mean an individual natural person. (1969, c. 961, s. 2; 1971, c. 1172, s. 1.)

Editor's Note. — The 1971 amendment redesignated subdivisions (1) and (2) as (2) and (7), respectively, rewrote subdivision (7), and added subdivisions (1), (3), (4), (5), (6) and (8).

§ 143-146. Statement of policy; rule-making power. — (a) Mobile homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of mobile homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new mobile homes, which are not so constructed as to provide reasonable safety and protection to their owners and users.

(b) The Commissioner is authorized and empowered to make and promulgate rules and regulations embodying the fundamental principles adopted, recommended, or issued as ANSI A119.1 and amended from time to time by the American National Standards Institute (ANSI), successor to the American Standards Association (ASA) applicable to mobile homes as defined herein.

(c) The Council is authorized to make and promulgate reasonable rules and regulations governing the procedure to be followed by a person or inspection department seeking to obtain a license pursuant to the provisions of this Article which shall provide opportunity for hearing before the Council on such application.

(d) In order to insure the highest degree of quality control in the manufacture of mobile homes, the Council is further authorized and empowered to make and promulgate reasonable rules and regulations governing the initial and follow-up manufacturing inspection practices and procedures to be performed by any person granted a license to issue a label of compliance pursuant to this Article. In order to assure uniformity in standards and enforcement, such rules and regulations may also provide that any such licensee and its operations may be inspected from time to time by any other person or licensee designated by the Council who shall report the results of such examination to the Council. In such case the reasonable expense incurred by the examiner in making such inspection shall be borne by the licensee whose operations were examined. (1969, c. 961, s. 3; 1971, c. 1172, s. 2.)

Editor's Note. — The 1971 amendment, in subsection (b), inserted the words "make and," substituted "ANSI" for "USAS," substituted "American National Standards Institute (ANSI)" for "United States of America Standards Institute (USASI)," and added subsections (c) and (d).

§ 143-147. Approval and licensing of persons and inspection departments.—(a) Any qualified person may make application to the Council for approval for license to issue labels of compliance. Any inspection department may make application to the Council for approval for issuing certificates of compliance. The Council after notice and hearing, if satisfied that such person or inspection department meets the qualifications prescribed in this Article, shall cause a license to be issued which license shall be valid for a consecutive period of 12 months and may be renewed for like consecutive periods on application to and approval by the Council;

(b) Any such license issued to a person other than an inspection department may be suspended or revoked after notice and hearing if such person:

(1) Is either insolvent, not competent, not independent, or untrustworthy;
(2) Has made false statements in his application to the Council for license;
(3) Fails or neglects to perform evaluations, testing, or manufacturing inspections in accordance with its proposed plans and procedures submitted to the Council or fails to comply with any applicable rules and regulations promulgated by the Council pursuant to G.S. 143-146(d);
(4) Has repeatedly, specifically or by implication authorized the attachment of its label of compliance to mobile homes and such mobile homes did not meet the standards and rules and regulations provided by this Article at the time said labels were attached.

(c) Any such license issued to an inspection department may be suspended or revoked after notice and hearing if such department:

(1) Is not competent;
(2) Has issued a certificate of compliance on a mobile home when such mobile home was not opened for inspection so that the entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;
(3) Has issued a certificate of compliance on a mobile home and such mobile home did not at the time of inspection meet the standards and rules and regulations provided by this Article. (1969, c. 961, s. 4; 1971, c. 1172, s. 3.)

Editor's Note. — The 1971 amendment rewrote this section.

§ 143-148. Compliance with the Commissioner's rules.—(a) No individual natural person, firm, partnership, association or corporation may manufacture, sell, or offer for sale any mobile home in this State which has been constructed after July 1, 1970, unless such mobile home, its components, systems, and appliances have been constructed and assembled in accordance with the standards herein defined.

(b) Any mobile home which bears a label or seal of compliance of a person licensed and approved by the Council shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this Article. (1969, c. 961, s. 5; 1971, c. 1172, s. 4.)

Editor's Note. — The 1971 amendment rewrote this section.

§ 143-149. Necessity for obtaining label or certificate for purposes of sale.—No individual natural person, firm, partnership, association or corporation shall after September 1, 1971, sell or offer for sale any mobile home in this State, which mobile home does not bear permanently attached thereto a label of compliance or for which mobile home the individual natural person, firm, partnership, association, or corporation selling or offering to sell such mobile home does not have a certificate of compliance; provided it shall be a defense to any prosecution for a violation of the provisions of this section if such individual natural person, firm, partnership, association or corporation shall show that a certificate of title for such mobile home as required by G.S. 20-52 was obtained prior to September 1, 1971, or produces other satisfactory evidence on file with the North Carolina Department of Motor Vehicles that such mobile home was manufactured prior to September 1, 1971. (1971, c. 1172, s. 5.)

§ 143-150. No electricity to be furnished units not in compliance.—It shall be unlawful for any individual natural person, partnership, firm or corporation to allow any electric current for use in any mobile home to be turned on or to continue to furnish electricity for use in such mobile home without having first ascertained that either a label of compliance is permanently attached to said mobile home or a certificate of compliance has been issued for such mobile home, provided this section shall not apply if electricity to such mobile home had been turned on or furnished prior to September 1, 1971, by said firm or corporation or if the owner of said mobile home shall have obtained a certificate of title for said mobile home as required by G.S. 20-52 prior to September 1, 1971, or his predecessor in title shall have obtained such certificate prior to September 1, 1971, or the owner furnishes other satisfactory evidence on file with the North Carolina Department of Motor Vehicles that said mobile home was manufactured prior to September 1, 1971. (1971, c. 1172, s. 6.)

§ **143-151. Penalties.**—Any individual natural person, partnership, firm, association or corporation who shall be adjudged to have violated the provisions of G.S. 143-148(a), G.S. 143-149, or G.S. 143-150 shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not to exceed five hundred dollars ($500.00) for each offense. (1971, c. 1172, s. 7.)

§ **143-151.1. Enforcement.**—The Commissioner of Insurance or any inspection department may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of this Article. (1971, c. 1172, s. 8.)

ARTICLE 12.

Law-Enforcement Officers' Benefit and Retirement Fund.

§ **143-166. Law-Enforcement Officers' Benefit and Retirement Fund.**—(a) In every criminal case finally disposed of in the criminal courts of this State, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case may be, three dollars ($3.00) additional cost to be collected and paid over to the Treasurer of North Carolina and held in a special fund for the purposes of this Article. Two dollars ($2.00) of such costs shall be administered under subsections (b) through (q) of this section, and one dollar ($1.00) shall be administered under subsections (r) through (w) of this section. The local custodian of such costs shall monthly transmit such moneys to the State Treasurer, with a statement of the case in which the same has been collected, except that the requirement to submit a statement of the case does not apply in district court counties. The costs assessed under this Article shall not apply to violations of municipal ordinances, unless a warrant is actually issued and served. A county or municipality shall pay no part of the costs or assessments.

Two thirds of the moneys so received shall annually be set up in a special fund to be known as "The Law-Enforcement Officers' Benefit and Retirement Fund."

(g) The Board of Commissioners of the said Fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold or invest the same for the uses of said Fund in accordance with the purposes of this Article. And the Board shall have the authority to invest and reinvest any funds not immediately needed in any of the following:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

(2) Obligations of the federal intermediate credit banks, federal home loan banks, Federal National Mortgage Association, banks for cooperatives, and federal land banks;

(3) Obligations of the State of North Carolina;

(4) General obligations of other states of the United States;

(5) General obligations of cities, counties, and special districts in North Carolina;

(6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services;

(7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States government, or by some other agency of the United States government;

(8) In certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the Federal Deposit Insurance Corporation not to exceed the sum of ten thousand dollars ($10,000.00) in any one bank or trust company; and

(9) In the shares of federal savings and loan associations and State chartered building or savings and loan associations in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed fifteen thousand dollars ($15,000.00) in any one of such associations.

Subject to the limitations set forth above, said Board shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(i) The Board of Commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this Article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said Board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the Board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this Article, he shall voluntarily pay into the Fund herein created a percentage of his monthly salary, which percentage shall be determined by the said Board: Provided, that any officer so voluntarily contributing to the Fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the Fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the Retirement Fund herein provided for, shall voluntarily pay into the Fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income.

The Board of Commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law-enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the Fund for credit to the individual account of such member any one or more of the following:

(1) An amount which, when taken with any additional amount which may be permitted by the Board to be paid on behalf of such member, shall

not exceed in any year fifteen percent (15%) of such member's compensation; and

(2) A sum not to exceed three times the value of prior service of such member as determined by the Board of Commissioners; and

(3) A sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave;

such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the Board of Commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the Board of Commissioners shall determine on the basis of the tables and rate of interest last adopted by the Board of Commissioners for this purpose: Provided, however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town or other subdivision of government upon the death or withdrawal from the Fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the State of North Carolina to finance and contribute, for the benefit of each member employed by the State as a law-enforcement officer, an amount equal to three times the value of his prior service and an amount equal to three times the cost of matching his contribution, and a sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave. Such contribution or financing on the part of the State shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the Fund of a member such sums credited to that individual member's account shall revert to the general fund or Highway Fund or Wildlife Fund of the State of North Carolina according to the source of the original appropriation. The Board of Commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the State for those law-enforcement officers whose salary is paid out of the general fund, and from the Highway Fund of the State for those law-enforcement officers whose salary is paid out of the Highway Fund appropriation in such amount as may be necessary to pay the State's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other State appropriations and in the sums and amounts as determined by the Board of Commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the State of North Carolina shall apply only to those members who are law-enforcement officers of the State of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the Teachers' and State Employees' Retirement System provided by Chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the Law-Enforcement Officers' Benefit and Retirement Fund.

(j) All officers who have contributed to the Retirement Fund herein provided for, and who have at least 15 years of membership service in the Fund, shall be eligible for retirement benefits. The Board of Commissioners is authorized, in its discretion under the rules and regulations promulgated by it, to determine when an officer has completed at least 15 years of membership service and the age at which a member may be deemed eligible to apply for retirement benefits.

(m) "Law-enforcement officers" in the meaning of this Article shall mean all officers employed by the State of North Carolina or any political subdivision thereof, who are clothed with the full power of arrest and whose primary duty is that of enforcing on public property the criminal laws of the State and/or serving civil processes.

(r) One third of the sum derived from the court costs provided for in subsection (a) of this section shall be set aside and held in a separate fund, designated as "Separate Benefit Fund," to be used for the payment of benefits as hereinafter provided.

(s) The Board of Commissioners shall have control of all payments to be made from the "Separate Benefit Fund." It shall hear and decide all applications for benefits created and allowed under this subsection, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties, and it shall have the power to make decisions on applications for benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself. The Board of Commissioners shall have authority to determine the eligibility or status of any applicant of any and all of those who come within the categories of law-enforcement officers named in subsection (m) of this section, in accordance with general rules and regulations adopted by the Board, and the decision of the Board of Commissioners as to such membership, eligibility or status shall be final.

(t) The Board of Commissioners shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine eligibility for benefits under this subsection, of a law-enforcement officer, (as defined in this section) and to determine the amounts to be paid after it is determined by the Board that such officer is eligible. Notwithstanding the foregoing, no person shall be eligible for benefits hereunder unless he is in active service as a law-enforcement officer at the occurrence of a contingency for which benefits may be payable, or unless he has retired from such service on or after July 1, 1965. Eligibility shall be determined without regard to whether or not an officer is a member of the Retirement Fund established by this section. Benefits may be provided by the Board, within the availability of funds, as follows:

(1) A lump sum payable to the designated beneficiary upon the death of an eligible officer;

(2) Hospital, surgical, and medical benefits covering eligible officers, their legal spouses, and their dependent children under 18 years of age.

(u) The benefits provided for in subsection (t) of this section, shall be in addition to all benefits provided for in subsections (b) through (q) of this section.

(v) If the amount derived from the increase in court costs provided by this section shall not be sufficient at any time to enable the Board of Commissioners to pay each person entitled to benefits in full, then an equitably graded percentage of such payment or payments shall be made to each beneficiary until the "Separate Benefit Fund" is replenished sufficiently to warrant resumption thereafter of full benefits to each of said beneficiaries.

(w) "Local fund" shall mean any local pension fund, or local benefit fund, or local association established before July 1, 1965 under authorization of law and operated to provide benefits for law-enforcement officers of any political subdivision within the year beginning July 1, 1965.

At such date as the Board of Commissioners may determine, but not later than September 30, 1966, the Board may, but need not, cause to be paid from the "Separate Benefit Fund" to a local fund a portion of the income previously received by the "Separate Benefit Fund" within the year beginning July 1, 1965 from court costs collected in the political subdivision and to whose officers such local fund has provided benefits. Such portion, if any, shall be determined in the sole discretion of the Board of Commissioners, after its review of any pertinent information which shall be furnished by such political subdivision at the request of such Board, and after its review of the operation and experience of the "Separate Benefit Fund" to June 30, 1966 or, if earlier, to the date of such determination. Any decision or action hereunder by the Board of Commissioners shall be final and conclusive. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949 c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½; 1961, c. 397; 1963, cc. 144, 939, 953; 1965, c. 351, ss. 1, 2; 1967, c. 691, s. 52; c. 943; 1971, c. 80, ss. 1, 2; c. 837, s. 6; c. 1235.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "three dollars ($3.00)" for "two dollars ($2.00)" in the first sentence of subsection (a), added the present second sentence in that subsection, substituted "Two thirds of the moneys" for "The moneys" at the beginning of the last sentence in such subsection and added subsections (r) to (w).

Section 3 of the 1965 act provides that "All laws, including local and special acts, assessing sums in court costs for the support of a local fund as defined in subsection (w) of G.S. 143-166 are hereby specifically repealed, and all other laws and clauses of laws in conflict with this act are hereby repealed, but this act shall not be construed to amend or modify subsections (b) through (q) of G.S. 143-166."

The first 1967 amendment, effective July 1, 1967, substituted the present last three sentences in the first paragraph of subsection (a) for the former last sentence therein.

The second 1967 amendment substituted "fifteen thousand dollars ($15,000.00)" for "ten thousand dollars ($10,000.00)" in subdivision (9) of subsection (g).

The first 1971 amendment, in subsection (j), substituted "at least 15 years of membership service in the Fund" for "had twenty years' continuous service as such peace officer in this State" in the first sentence, deleted "and" at the end of that sentence, substituted "at least 15 years of membership service and the age at which a member may be deemed eligible to apply for retirement benefits" for "twenty years of continuous service" in the second sentence, and substituted "mean all officers employed by the State of North Carolina" for the language formerly appearing between "meaning of this Article shall" and "or any political subdivision" in subsection (m).

The second 1971 amendment inserted "or Wildlife Fund" in the second sentence of the last paragraph of subsection (i).

The third 1971 amendment, in the third paragraph of subsection (i), substituted "any one or more of the following" for "either or both" and added subdivision (3). The amendment also added the language following "contribution" in the first sentence of the fourth paragraph of subsection (i).

Session Laws 1971, c. 837, contains provisions as to transfer of wildlife protectors from the Teachers' and State Employees' Retirement System to the Law-Enforcement Officers' Benefit and Retirement Fund.

Only the subsections affected by the amendments are set out.

ARTICLE 12A.

Law-Enforcement Officers' Death Benefit Act.

§ 143-166.1. Purpose.—In consideration of hazardous public service rendered to the State by law enforcement officers, there is hereby provided a system of benefits for dependents who are closely related to such officers as may be killed in the discharge of their official duties. (1959, c. 1323, s. 1; 1965, c. 937.)

Editor's Note.—

The 1965 amendment rewrote this section.

§ 143-166.2. Definitions.—The following words and phrases, when used in this article, shall have the meanings assigned to them by this section unless the context clearly indicates another meaning:

(1) The term "dependent child" shall mean any unmarried child of the deceased officer, whether natural, adopted or posthumously born, who was under eighteen years of age and dependent upon and receiving his chief support from said officer at the time of his death;

(2) The term "dependent parent" shall mean a parent of an officer, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the officer at the time of the injury which resulted in his death;

(3) The term "killed in the line of duty" shall apply to any law enforcement officer who is killed while in the discharge of his official duty or duties,

law-enforcement officers employed full time by the State of North

(4) The term "law-enforcement officer" or the term "officer" shall mean all Carolina or any county or municipality thereof and all full-time employees of the North Carolina Department of Correction;

(5) The term "widow" shall mean the wife of an officer who survives him and who was residing with such officer at the time of and during the six months next preceding the time of injury to such officer which resulted in his death and who also resided with such officer from the date of injury up to and at the time of his death. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025.)

Editor's Note. — The 1965 amendment substituted "total and entire" for "chief" in subdivision (2), deleted "violent" preceding "injury" in that subdivision, rewrote subdivisions (3) and (4), and deleted "violent" preceding "injury to" in subdivision (5).

The 1969 amendment added, at the end of subdivision (4) "and all full-time employees of the North Carolina Department of Correction."

§ **143-166.3. Payments; determination.** — When any law-enforcement officer shall be killed while in the discharge of his official duties, the Industrial Commission shall award the total sum of ten thousand dollars ($10,000.00) as follows:

(1) To the widow of such officer if there be a surviving widow; or

(2) If there be no widow qualifying under the provisions of this Article, then said sum shall be awarded to any surviving dependent child of said officer; and if there is more than one surviving dependent child, then said sum shall be awarded to and equally divided among all surviving dependent children; or

(3) If there be no widow and no dependent child or children qualifying under the provisions of this Article, then the sum shall be awarded to the surviving dependent parent of such officer; and if there be more than one surviving dependent parent, then said sum shall be awarded to and equally divided between the surviving dependent parents of said officer. (1959, c. 1323, s. 1; 1965, c. 937; 1971, c. 960.)

Editor's Note. — The 1965 amendment rewrote the introductory paragraph.

The 1971 amendment substituted "ten thousand dollars ($10,000.00)" for "five thousand dollars ($5,000.00)" in the introductory paragraph.

§ **143-166.4. Funds; conclusiveness of award.**—Such award of benefits as is provided for by this article shall be paid from the Contingency and Emergency Fund and such amounts as may be required to pay benefits provided for by this article are hereby appropriated from said fund for this special purpose.

The Industrial Commission shall have power to make necessary rules and regulations for the administration of the provisions of this article. It shall be vested with power to make all determinations necessary for the administration of this article and all of its decisions and determinations shall be final and conclusive and not subject to review or reversal except by the Industrial Commission itself. The Industrial Commission shall keep a record of all proceedings conducted under this article and shall have the right to subpoena any persons and records which it may deem necessary in making its determinations, and the Industrial Commission shall further have the power to require all persons called as witnesses to testify under oath or affirmation, and any member of the Industrial Commission may administer oaths. If any person shall refuse to comply with any subpoena issued hereunder or to testify with respect to any matter relevant to proceedings conducted under this article, the Superior Court of Wake County, on application of the Industrial Commission, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as for contempt. (1959, c. 1323, s. 1; 1965, c. 937.)

Editor's Note. — The 1965 amendment rewrote the first paragraph and substituted "Industrial Commission" for "Council of State" and "Council" throughout the second paragraph.

§ **143-166.5. Other benefits not affected.**—None of the other benefits now provided for law enforcement officers or their dependents by the Workmen's Compensation Act or other laws shall be affected by the provisions of this article, and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1959, c. 1323, s. 1, 1965, c. 937.)

Editor's Note. — The 1965 amendment deleted "State" preceding "law enforcement" near the beginning of this section.

§ **143-166.6. Awards exempt from taxes.**—Any award made under the provisions of this article shall be exempt from taxation by the State or any political subdivision. The Industrial Commission shall not be responsible for any determination of the validity of any claims against said awards and shall distribute the death benefit awards directly to the dependent or dependents entitled thereto under the provisions of this article. (1959, c. 1323, s. 1; 1965, c. 937.)

Editor's Note. — The 1965 amendment rewrote this section.

§ **143-166.7. Applicability of article.** — The provisions of this article shall also apply and be in full force and effect with respect to any law enforcement officer killed in the discharge of his official duties on or after January 1, 1964. (1965, c. 937.)

ARTICLE 14.

North Carolina Zoological Authority.

§ **143-171. Creation of Zoological Authority.**—There is hereby created an agency to be designated as the North Carolina Zoological Authority hereinafter referred to as the Authority. (1969, c. 1104, s. 1.)

Editor's Note.—Session Laws 1969, c. 1104, s. 13, makes the act effective July 1, 1969.

Former article 14 of this chapter, containing §§ 143-171 to 143-177.1 and relating to the State Planning Board, was repealed by Session Laws 1959, c. 24.

State Government Reorganization.—The North Carolina Zoological Authority was transferred to the Department of Administration by § 143A-89, enacted by Session Laws 1971, c. 864.

§ **143-172. Board of Directors.**—The Board of Directors hereinafter referred to as the Board, shall consist of fifteen members and the Board shall be the sole authority in the establishment and location of the North Carolina Zoological Garden.

The fifteen members shall be appointed by the Governor for a term of three years, said term to begin on July 15, 1969. Upon the expiration of the terms of office, and every three years thereafter, the Governor shall appoint successors to the Board. Should a vacancy occur for any reason, the remaining members of the Board shall appoint some person to fill the unexpired term.

At the time of the appointment of members by the Governor he shall designate one of his appointees to serve as temporary chairman until the Board elects a chairman. The Board shall elect a chairman and such other officers as it deems necessary.

The Board shall meet at least quarterly at such times and places as it may determine. Special meetings of the Board may be called by the chairman of the Board or upon the written request of at least four members of the Board. Half the Board members shall constitute a quorum at any meeting of the Board. (1969, c. 1104, s. 2.)

§ **143-173. Advisory Board.**—The Board of Directors shall appoint not less than 60 and not more than 100 persons, who need not be citizens of the State, and such persons shall constitute the Advisory Board to the Board of Directors. The Advisory Board shall not be a policy-making body, but shall consult with and make recommendations to the Board of Directors to assist it in carrying out the purpose and intent of this Article. The members of the Advisory Board shall serve for terms of three years. The Board of Directors shall appoint to fill any vacancy occurring on the Advisory Board for the unexpired term. (1969, c. 1104, s. 3; 1971, c. 923.)

Editor's Note.—The 1971 amendment, in the first sentence, substituted "not less than 60 and not more than 100 persons, who need not be" for "sixty," and substituted "and such persons shall" for "who shall."

§ **143-174. Site committee.** — The Board of Directors and the Advisory Board shall jointly select a site committee composed of nine members who shall be citizens of the State and who shall, insofar as possible, represent the various geographical areas of the State. It shall be the duty of the site committee to investigate and make recommendations to the Board of Directors of locations for the Zoological Garden. (1969, c. 1104, s. 4.)

§ **143-175. Powers of the Board.**—The Board shall have the authority to acquire, construct, establish, operate and maintain a zoological garden. The Board shall be the governing body of the Authority and shall adopt necessary bylaws, rules and regulations for the conduct of the North Carolina Zoological Garden.

The Board is specifically authorized, but not by way of limitation, to exercise the following powers and duties:

(1) To acquire on behalf and in the name of the North Carolina Zoological Garden a suitable site for a zoological garden.

(2) To employ architects to prepare plans for the zoological garden and buildings, to assist and advise the architects in the preparation of those plans, and to approve all plans for the zoological garden and buildings.

(3) To enter into contracts for the purchase of all real property and interests therein, services, materials, furnishings, and equipment required in connection with the location, design, construction, furnishing, equipping and operations of the North Carolina Zoological Garden.

(4) To supervise generally the location, construction, furnishing, equipping and operations of the North Carolina Zoological Garden.

(5) To formulate programs to promote public appreciation of the North Carolina Zoological Garden.

(6) To disseminate information on the animals and garden as deemed necessary.

(7) To invite outstanding zoological garden experts to address groups in the State.

(8) To develop an effective public support of the North Carolina Zoological Garden.

(9) To solicit financial support from various private sources within and without the State of North Carolina.

(10) To do all other things necessary to advance and carry out the objectives of the Board. (1969, c. 1104, s. 5.)

§ **143-176. Executive committee.**—The Board shall annually elect from its membership an executive committee of five members. The chairman of the Board shall serve ex officio as chairman of the executive committee.

The executive committee shall meet at such times and places as the Board may direct, or at the call of the chairman, or upon the request of any two members of the committee. The Board may delegate to the executive committee any powers it may deem expedient and wise, and the executive committee is authorized to exercise all powers delegated to it by the Board. (1969, c. 1104, s. 6.)

§ **143-176.1. Zoo Director.**—The Board is authorized to employ and fix the salary of a director, who shall also act as secretary to the Board and members of the executive committee, and prescribe his powers and duties. The Director, with the approval of the Board, shall employ such personnel as may be necessary from time to time to perform the duties of the Board and to carry out the purposes of this article. (1969, c. 1104, s. 7.)

§ **143-177. Right to receive gifts.**—In order to carry out the purposes of this article, the Board is authorized to acquire by gift or will, absolutely or in trust, from individuals, corporations, or any other source money or other property, or any interests in property, which may be retained, sold or otherwise used to promote the purposes of this article. The use of gifts shall be subject to such limitations as may be imposed thereon by donors, notwithstanding any other provisions of this article. (1969, c. 1104, s. 8.)

§ **143-177.1. North Carolina Zoological Garden Fund.**—All gifts made to the North Carolina Zoological Garden for the purposes of this article shall be exempt from every form of taxation including, but not by the way of limitation, ad valorem, intangible, gift, inheritance and income taxation. Proceeds from the sale of any property acquired under the provisions of this article shall be deposited in the North Carolina Zoological Garden treasury. (1969, c. 1104, s. 9.)

§ **143-177.2. Cities and counties.**—Cities and counties are hereby authorized to expend funds derived from nontax sources and to make gifts of surplus property, to assist in carrying out the purposes of this article. (1969, c. 1104, s. 10.)

§ **143-177.3. Sources of funds.**—It is the intent of this article that the funds for the acquisition of site, for the creation, establishment, construction, operation and maintenance of the North Carolina Zoological Garden shall be obtained primarily from private sources; however, the Board of Directors is hereby authorized to receive and expend such funds as may from time to time become available by appropriation or otherwise from the State of North Carolina: Provided, that the North Carolina Zoological Authority shall not in any manner pledge the faith and credit of the State of North Carolina for any of its purposes. (1969, c. 1104, s. 11.)

ARTICLE 15.

Commission on Interstate Cooperation.

§ **143-178. North Carolina Commission on Interstate Cooperation.**—There is hereby established the North Carolina Commission on Interstate Cooperation. This Commission shall be composed of eleven members as follows:

(1) President of the Senate;
(2) Speaker of the House of Representatives;
(3) Three senators designated by the President of the Senate;
(4) Three representatives designated by the Speaker of the House; and

(5) Three administrative officials designated by the Governor. (1937, c. 374, s. 4; 1947, c. 578, s. 3; 1959, c. 137, s. 2; 1961, c. 1108; 1965, c. 866.)

Editor's Note.—

The 1965 amendment made the President of the Senate a member of the Commission.

State Government Reorganization.—The North Carolina Commission on Interstate Cooperation was transferred to the Department of Administration by § 143A-91, enacted by Session Laws 1971, c. 864.

ARTICLE 17.

State Post-War Reserve Fund.

§ 143-193. Fund to be held for such use as directed by General Assembly.

Applied in Slade v. New Hanover County Bd. of Educ., 10 N.C. App. 287, 178 S.E.2d 316 (1971).

ARTICLE 18.

Rules and Regulations Filed with Secretary of State.

§ 143-195. Certain State agencies to file administrative regulations or rules of practice with Secretary of State; rate, service or tariff schedules, etc., excepted.

Cited in Porter v. State Bd. of Alcoholic Control, 4 N.C. App. 284, 166 S.E.2d 695 (1969).

ARTICLE 19.

Roanoke Island Historical Association.

§ 143-199. Association under patronage and control of State.

State Government Reorganization.—The Roanoke Island Historical Association was transferred to the Department of Art, Culture and History by § 143A-211, enacted by Session Laws 1971, c. 864.

ARTICLE 19A.

Governor Richard Caswell Memorial Commission.

§ 143-204.1. Creation and membership; terms and vacancies.

State Government Reorganization.—The Governor Richard Caswell Memorial Commission was transferred to the Department of Art, Culture and History by § 143A-213, enacted by Session Laws 1971, c. 864.

ARTICLE 19B.

Historic Swansboro Commission.

§ 143-204.5. Appointment of Commission; ex officio members; vacancies.

State Government Reorganization.—The Historic Swansboro Commission was transferred to the Department of Art, Culture and History by § 143A-214, enacted by Session Laws 1971, c. 864.

ARTICLE 20.

Recreation Commission.

§§ 143-205 to 143-210.1: Repealed by Session Laws 1969, c. 1145, s. 4, effective July 1, 1969.

Cross Reference.—As to transfer of functions, property, etc., of the Recreation Commission to the Department of Local Affairs, see § 143-326.

ARTICLE 21.

Department of Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.—It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this article, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interests of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare. It is the purpose of this article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Board of Water and Air Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. (1951, c. 606; 1967, c. 892, s. 1.)

Revision of Article.—Session Laws 1967, c. 892, rewrote article 21 of chapter 143, which was formerly captioned "State Stream Sanitation and Conservation" and consisted of §§ 143-211 to 143-215.7. Article 21, as contained in the 1967 act, consists of §§ 143-211 to 143-215.10, and has been codified as Part 1 of this article. Session Laws 1967, c. 933, has been codified as Part 2, in accordance with s. 13 of that act, which directed that it be incorporated in this article.

Editor's Note.—

For article on "Introduction to Water Use Law in North Carolina," see 46 N.C.L. Rev. 1 (1967).

§ 143-212. Department of Water and Air Resources created.—There is hereby created the Department of Water and Air Resources. (1959, c. 779, s. 1; 1967, c. 892, s. 1.)

State Government Reorganization.—The Department of Water and Air Resources was transferred to the Department of Natural and Economic Resources by § 143A-119, enacted by Session Laws 1971, c. 864.

§ 143-213. Definitions.—Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

(1) The term "air cleaning device" means any method, process or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(2) The term "air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor or any combination thereof.

(3) The term "air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(4) The term "air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant.

(5) The term "air pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, to animal or plant life or to property or that interferes with the enjoyment of life or property.

(6) The term "area of the State" means any municipality or county or portion thereof or other substantial geographical area of the State as may be designated by the Board.

(7) "Board" means the Board of Water and Air Resources created under the provisions of this Article.

(8) "Department" means the Department of Water and Air Resources to be governed by a Board of Water and Air Resources as created in this Article.

(9) Whenever reference is made in this article to the "discharge of waste," it shall be interpreted to include the discharge of waste into any unified sewerage system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State.

(10) The term "disposal system" means a system for disposing of sewage, industrial waste or other waste, and including sewer systems and treatment works.

(11) The term "effective date" means the date, as established pursuant to the statutory powers of the Board and announced by official regulations of the Board after which the statutory provisions designated by the Board shall become applicable and enforceable, with respect to persons within one or more watersheds, the State as a whole or one or more "areas of the State" as designated by the Board.

(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

(13) The term "outlet" means the terminus of a sewer system, or the point of emergence of any sewage, industrial waste or other waste or the effluent therefrom, into the waters of the State.

(14) "Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(15) The term "sewer system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

(16) The term "standard" or "standards" means such measure or measures of the quality of water and air as are established by the Board pursuant to G.S. 143-214.1 and G.S. 143-215.

(17) The term "treatment works" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other waste.

(18) "Waste" shall mean and include the following:

a. "Sewage," which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

b. "Industrial waste" shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

c. "Other waste" means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, and all other substances, except industrial waste and sewage, which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

(19) The term "water pollution" means a condition of any waters (as determined by standardized tests under conditions and procedures to be prescribed by official regulations to be issued under the authority of this Article) which is in contravention to the standards established and applied to such waters as set forth in G.S. 143-214.1.

(20) "Waters" shall mean any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.

(21) The term "watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed to be designated by the Board for all statutory purposes and to be defined by the Board in its official regulations. (1951, c. 606; 1957, c. 1275, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 4.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, in subdivision (5), deleted "for such" preceding "duration," inserted "is or tends," deleted "or detrimental" following "injurious," inserted "human" preceding "health," substituted "welfare, to" for "human safety," inserted "to," and added "or that interferes with the enjoyment of life or property."

§ **143-214. Board of Water and Air Resources.**—(a) Organization.—There is hereby created the North Carolina Board of Water and Air Resources, hereinafter referred to as "Board" which shall be charged with the duty of administering this Article. The Board shall consist of:

(1) One licensed physician;

(2) One who shall, at the time of appointment, be actively connected with the State or local board of health and have had experience in water and air pollution control activities;

(3) One who shall, at the time of appointment, be actively connected with and have had experience in agriculture, provided that except for the connection with agriculture such member shall not be an employee, officer or representative of any industry or political subdivision which may fall under the jurisdiction or be directly affected by the Board created by this section;

(4) One who shall, at the time of appointment, be a licensed engineer engaged in work connected with planning or conservation of water or air resources, or planning of water or sewer systems, or having experience in the field of industrial water supply or water and air pollution control, or have had practical experience in water supply and water and air pollution control problems of municipal government;

(5) One who shall, at the time of appointment, be actively connected with and have had experience in the fish and wildlife activities of the State, provided that except for the connection with the fish and wildlife activities of the State, such member shall not be an employee, officer or representative of any industry or political subdivision which may fall under the jurisdiction or be directly affected by the Board created by this section;

(6) One who shall, at the time of appointment, be knowledgeable in the ground water industry, provided that such member shall not be an employee, officer or representative of any industry or political subdivision which may fall under the jurisdiction or be directly affected by the Board created by this section;

(7) Five members interested in water and air pollution control, appointed from the public at large, provided that no such public member shall be an employee, officer or representative of any industry or political subdivision which may fall under the jurisdiction or be directly affected by the Board created by this section;

(8) One who shall, at the time of appointment, be actively connected with industrial production and have had experience in the field of industrial air and water pollution control;

(9) One who shall, at the time of appointment, be actively connected with and have had experience in pollution control problems of municipal or county government.

The members shall serve staggered terms of office of six years. Each appointment shall be made by the Governor of North Carolina upon the expiration of the term of each member appointed pursuant to the provisions of G.S. 143-214(a) as amended by Chapter 892 of the Session Laws of 1967. The Governor shall have the power to designate from the at-large members the member of the Board who shall serve as chairman thereof for such period as the Governor may fix. All members shall hold their offices until their successors are appointed and qualified. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time, remove any member of the Board for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office. In each instance appointments to fill vacancies in the membership of the Board shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. Provided, however, appointments to fill vacancies in the membership of the Board which were appointed pursuant to G.S. 143-214(a) as amended by Chapter 892 of the Session Laws of 1967 shall be appointed to conform with the membership criteria in subdivisions (1) through (9) of this subsection (a).

The office of member of the North Carolina Board of Water and Air Resources is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9 of the North Carolina Constitution.

(b) Divisions.—The Board may in its discretion divide the functions and duties of the business and affairs under the jurisdiction of the Board into such divisions or other units as the Board may think proper and may make each division or unit responsible for the discharge of its distinctive functions and duties. These shall include divisions of water and air pollution control, ground water, navigable waterways and such other divisions as the Board deems proper, and the Board may change the names of and revise the duties of its divisions or other units as it deems appropriate. The Board may assign such administrative and other personnel to each division as the Board may deem requisite and proper.

(c) Compensation.—The members of the Board shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Board shall receive subsistence and travel expenses according to the prevailing State practices and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Board. The per diem payments made to each member of the Board shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Board.

(d) Meetings of Board.—The Board shall meet at least once every three months and may hold special meetings at any time at the call of the chairman or any three members of the Board. Both regular and special meetings shall be at places and dates to be determined by the chairman, and all members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meetings, unless otherwise waived. Seven members of the Board shall constitute a quorum.

(e) Administration.—The Board shall have full power and authority to administer this Article and such other provisions of law as may be assigned to it, including the power and authority to adopt, amend, or rescind rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable in the administration of its statutory authority and responsibilities. The Board shall determine its own internal organization and methods of procedure and shall have an official seal which shall be judicially noticed. Subject to other provisions of this Article, which deal with the appointment of the Director and an assistant director, the Board is authorized in accordance with the provisions of the Personnel Act to appoint, fix the compensation, and prescribe the duties and powers of all officers, agents, auditors, accountants, experts and any and all other persons that may be necessary in order to perform the duties required by the Board in the administration of its statutory responsibilities. The Board may delegate to any officer, agent or employee so appointed by the Board such power and authority as it deems reasonable and proper for the effective administration of its statutory responsibilities, and may, in its discretion, bond any person handling moneys or signing checks hereunder. The Board may appoint subdivisions or committees from its membership, the number of members on said subdivisions or committees being fixed by the Board, for the purpose of holding hearings and reporting same to the Board for decision, for the purpose of making investigations, for the purpose of transacting such business and carrying out such policies as the Board shall fix and direct.

(f) Director.—The Board, with the approval of the Governor, shall appoint a full-time Director, who shall be a well qualified engineer, experienced and knowledgeable in the fields of water and air resource management. The Director shall be the administrative officer of the Board and shall perform in the name of the Board such functions and duties of the Board as shall be delegated to him by formal resolution. The Director shall be paid such salary as shall be fixed by the Governor, with the approval of the Advisory Budget Commission and shall serve at the pleasure of the Board. The Director shall attend all meetings, but without the power of voting, shall keep or cause to be kept an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, technical work, and shall make these records available for public inspection at all reasonable times. The Director shall direct the work of the personnel employed by the Board and perform such other duties as the Board may from time to time direct.

(g) Personnel and Facilities of Board.—The Board may employ such clerical, technical and professional personnel with such qualifications as the Board may prescribe, in accordance with the State Personnel Regulations and Budgetary Laws, and is hereby authorized to pay such personnel from any funds made available to it through grants and appropriations made to the Board or from any appropriations made to any other agency of the State for the benefit of the Board. The Board may, with the approval of the Governor, employ such consultants as it deems necessary and may compensate same for services received. The Attorney

General shall act as attorney for the Board, and shall initiate actions in the name of, and at the request of, the Board, and shall represent the Board in hearing of any appeal from or other review of any order of the Board.

(h) Acceptance and Administration of Federal or Private Funds.—The Board shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under any federal act or acts or from any federal agency, including funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds to the extent not inconsistent with the laws of this State and the rules and regulations thereunder pertaining to water and air resources. In the administration of either private or federal funds, the Board shall have authority to formulate plans and projects for federal approval or for the approval of foundations and to enter into such contracts and agreements as may be necessary for such purposes or to enter into joint agreements with any other agency or division of government for such purposes and to furnish such information as may be requested for any project or program related to or conducted pursuant to such plans and contracts. Such funds received by the Board pursuant to this provision shall be deposited in the State treasury to the account of the Board and shall remain in such account until used by the board.

(i) Assistant Director.—The Board, with the approval of the Governor, shall appoint an assistant director who shall be a registered engineer in the State of North Carolina. He shall be well qualified and knowledgeable in the principles of water and air pollution control. The assistant director appointed under this provision shall be paid a salary fixed by the Governor and approved by the Advisory Budget Commission. The assistant director, under the general supervision of the Director, shall carry out the administrative duties and policies with respect to the water and air pollution control programs, shall direct the work of the Department in the absence of the Director and shall perform such other duties as may be delegated to him, and the duties of said assistant director shall be fixed by resolution of the Board. The assistant director shall supervise the work of the employees assigned to the water and air pollution control programs and shall have the authority to review and approve all plans, specifications and reports as may be required in connection with applications for permits and other documents of approval authorized pursuant to the provisions of this Article as same relate to the water and air pollution control programs.

(j) Advisory Councils.—There is hereby authorized the establishment of a Water Control Advisory Council and an Air Control Advisory Council, hereinafter referred to as the Advisory Councils. Each Council shall consist of nine members appointed by the Governor. The membership of each Advisory Council shall include one registered professional engineer knowledgeable in matters of water or air pollution, depending upon which Council he serves on, as well as one representative from municipal government, one representative from county government, one representative of public health, two representatives from industry providing they are from different industries, one representative of agriculture, one licensed physician knowledgeable in the health aspects of water or air pollution depending upon which Council he serves on and one practicing biologist knowledgeable in the principles of water quality management. The assistant director shall serve as secretary to the Advisory Councils. The Councils shall meet either separately or jointly at the request of the chairman of the Board or any three members of the Board. Such administrative services and moneys as may be made available to or for the Advisory Councils shall be charges on the Board. Members of the Advisory Councils shall serve at the pleasure of the Governor. The members shall serve without compensation but shall receive regular State subsistence and travel expenses during the performance of their duties. The Advisory Councils shall assist the Board in the development of rules, regulations, and quality standards for water and air as may be considered necessary to achieve the purposes of this Article and may consider other matters related to the purposes of this part, which may be submitted to it by the Board. (1951, c. 606; 1953, c. 1295; 1957, c. 992; c. 1267, s. 2; 1959, c. 779, ss. 1, 8; 1967, c. 892, s. 1; 1971, c. 1090.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, rewrote subsection (a).

State Government Reorganization.—The Board of Water and Air Resources was transferred to the Department of Natural and Economic Resources by § 143A-120, enacted by Session Laws 1971, c. 864.

The Water Control Advisory Council and the Air Control Advisory Council were transferred to the Department of Natural and Economic Resources by § 143A-121, enacted by Session Laws 1971, c. 864.

§ 143-214.1. Water; water quality standards and classifications; duties of Board.—(a) The Board is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this article:

(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this article most effectively;

(2) To survey all the waters of the State and to separately identify all such waters as the Board believes ought to be classified separately in order to promote the policy and purposes of this article, omitting only such waters, as in the opinion of the Board, are insufficiently important to justify classification or control under this article; and

(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Board deems proper in order to promote the policy and purposes of this article most effectively.

(b) Criteria for Classification.—In developing and adopting classifications, and the standards applicable to each, the Board shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to the best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards.—In establishing the standards applicable to each classification, the Board shall consider and the standards when finally adopted and published shall state: The extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications.—In assigning to each identified water the appropriate classifications (with its accompanying standards), the Board shall consider, and the decision of the Board when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses and extent thereof which have been made, are being made, or may in the future be made, of such water for domestic consumption, bathing, fish or wildlife and their culture, industrial consumption, transportation, fire prevention, power generation, scientific or research uses, the disposal of sewage, industrial wastes and other wastes, or any other uses.

(e) Proposed Adoption and Assignment of Classification.—Prior to the adoption by the Board of the series of classifications and standards applicable thereto as specified in subsection (a) (1) of this section, prior to the assignment by the Board of any such classifications to any waters as specified in subsection (a) (3) of this section. and prior to any modification of any of such actions previously taken by the Board, the Board shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the following requirements:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Board proposes to take. The notice shall either include details of such proposed action, or where such proposed action, as in the case of proposed assignments of classifications to identified waters, is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the office of the Board in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Board pursuant to the provisions of § 143-215.4.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Board on or before the first date set for the hearing. The Board is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Board shall permit anyone who so desires to file a written argument or other statement with the Board in relation to any proposed action of the Board any time within 30 days following the conclusion of any public hearing or within any such additional time as the Board may allow by notice given as prescribed in this section.

(f) Final Adoption and Assignment of Classification. — Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Board pursuant to this section, the Board shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. When final action has been adopted and is published with respect to the assignment of classifications applicable to the identified waters of any one or more watersheds within the State, the Board shall likewise publish as part of its official regulations, the effective date for the application of the provisions of §§ 143-215.1 and 143-215.2 to persons within such watershed or watersheds.

(g) Board's Power to Modify or Revoke.—The Board is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this part; any such modification or revocation, however, to be subject to the procedural requirements of this article. (1951, c. 606; 1957, c. 1275, s. 2; 1967, c. 892, s. 1; 1969, c. 822, s. 1.)

Editor's Note. — The 1969 amendment inserted "scientific or research uses" in subdivision (3) of subsection (d).

Session Laws 1969, c. 822, s. 2, provides: "It is hereby declared to be the intent of this act to clarify the authority of the North Carolina Board of Water and Air Resources to classify streams under the water pollution control laws for scientific or research uses. It is further declared to be the intent of this act that the Board of Water and Air Resources may develop a supplemental classification of streams for scientific or research uses together with standards applicable to said classification, and that said classification may be assigned to any identified waters (whether previously classified or reclassified or proposed for reclassification) pursuant to the procedures prescribed by law for classification or reclassification of waters."

§ 143-215. Air quality standards and classifications.—(a) The Board is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Board deems proper in order to promote the policies and purposes of this Article most effectively.

(4) To develop and adopt classifications for use in classifying air contaminant sources, which in the judgment of the Board may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Any person operating or responsible for the operation of air contaminant sources of any class for which the Board requires reporting shall make reports containing such information as may be required by the Board concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt such emission control standards as in the judgment of the Board may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Board.

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(b) Criteria for Standards.—In developing air quality and emission control standards, the Board shall recognize varying local conditions and requirements and may prescribe different standards for different areas, as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this Article.

(c) Proposed Adoption of Standards and Classifications.—Prior to the adoption by the Board of air quality standards, emission control standards and classifications for air contaminant sources, and prior to any modification of any such actions previously taken, the Board shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the procedure set forth in subsections (e)(1), (e)(2), and (e)(3) of § 143-214.1.

(d) Final Adoption of Air Quality Standards, Emission Control Standards and Classifications for Air Contaminant Sources.—Upon completion of hearings and consideration of submitted evidence and arguments concerning any proposed action by the Board with respect to the adoption of air quality standards, emission control standards and classifications for air contaminant sources, the Board shall adopt its final action with respect thereto and shall publish such final action as a part of its official regulations. When final action has been adopted and is published with respect to the aforestated standards and classifications, the Board shall likewise publish as a part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.1 and 143-215.2 to persons within the State as a whole or within any designated area of the State.

(e) Board's Power to Modify or Revoke.—The Board is hereby empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part, any such modification or revocation, however, to be subject to the procedural requirements of this Article. (1967, c. 892, s. 1; 1971, c. 1167, s. 5.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, added subsection (a) (6).

§ 143-215.1. Control of new sources of air and water pollution; permits required.—(a) Water.—After the effective date applicable to any watershed established pursuant to G.S. 143-214.1, no person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Board a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Make any new outlets into the waters of such watershed;

(2) Construct or operate any new sewer system, treatment works or disposal system within such watershed;

(3) Alter, extend, or change the construction or the method of operation of any existing sewer system, treatment works or disposal system within such watershed;

(4) Increase the quantity (determined by such method of measurement as the Board shall prescribe by its official regulations) of sewage, industrial waste, or other waste discharged through any existing outlet or processed in any existing treatment works or disposal system to an extent which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water, or to an extent beyond such minimum limits as the Board may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations:

(5) Change the nature of the sewage, industrial waste or other waste discharged through any existing disposal system in any way which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water.

(6) Willfully cause or permit any wastes, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications, unless allowed as a condition of any special order or other appropriate instrument issued or entered into by the Board under the provisions of this Article.

In connection with the above, no such permit shall be granted for the disposal of wastes into waters classified as sources of public water supply, where the State Board of Health determines and advises the Board that such disposal is sufficiently close to the intake works of a public water supply as to have an adverse effect thereon, until the Board has referred the complete plans and specifications to the State Board of Health and has received advice in writing that same are approved in accordance with the provisions of G.S. 130-161. In any case where the Board denies a permit, it shall state in writing the reason for such denial and shall also state the Board's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit.

(b) Air.—After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215, no person shall do any of the following things or carry out any of the following activities which would contravene or be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Board a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Establish or operate any new air contaminant source;
(2) Build, erect, use or operate any new equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
(3) Alter or change the construction or method of operation of any existing equipment or process from which air contaminants are or may be emitted;
(4) Enter into a contract for the construction and installation of any air cleaning device, or allow or cause such device to be constructed, installed, or operated.

Any plant, facility, equipment or air cleaning device which on the effective date of such control standards is under construction or being installed, or is the subject of a contract for construction, installation or purchase, shall not be considered within the meaning of subsection (b) to be a new air contaminant source, new equipment or a new air cleaning device.

(c) Board's Power as to Permits.—The Board shall act upon all applications for permits so as to effectuate the purpose of this section, by preventing, so far as reasonably possible, any pollution or any increased pollution of the waters and air of the State from any additional or enlarged sources.

The Board shall have the power:

(1) To grant a permit with such conditions attached as the Board believes necessary to achieve the purposes of this section;
(2) To grant any temporary permit for such period of time as the Board shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential; and
(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no condition shall be attached to the permit, except when the Board finds such denial or such conditions necessary to effectuate the purposes of this section.

(d) Procedure as to Application and Permits.—All applications for permits and all permits issued by the Board, or decisions denying any applications for a permit, shall be in writing. The Board shall act on all applications for permits as rapidly as possible. The Board shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Board to take action on an application for a permit within 90 days shall be treated as approval of such application. The Board shall adopt such forms and rules as it deems necessary, to be published as part of its rules of procedure, with respect to the application for the grant or denial of permits pursuant to this section. Such rules may require the submission of plans and specifications and other information as the Board deems necessary to the proper evaluation of the application for a permit.

(e) Hearings and Appeals.—Any person whose application for a permit is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Board upon making demand therefor within 30 days following the giving of notice by the Board as to its decision on such application. Unless such a demand for a hearing is made, the decision of the Board on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Board. (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, added subsection (a) (6).

§ 143-215.2. Abatement of existing pollution; required compliance with special orders.—(a) After the effective date applicable to any watershed, or established for any air quality standards or emission control standards, no person shall discharge any sewage, industrial waste, or other waste into the waters of such watershed or any air contaminants into the outdoor atmosphere of the State of any designated area thereof in violation of, or except upon compliance with the terms of, any special order, or other appropriate instrument, issued by the Board to such person in accordance with the procedure specified by this article.

(b) Board's Powers as to Special Orders.—The Board is hereby empowered, after the effective date applicable to any watershed, or established for any air quality standards or emission control standards, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Board deems necessary and feasible in order to alleviate or eliminate such pollution. No such special order shall be issued against a person, or, if issued, the time for compliance therewith by such person shall be extended to the extent necessary, where the Board concludes, after investigation, or where it is demonstrated after a hearing, that it is impossible or, for the time being, not feasible for such person to correct or eliminate the activities causing or contributing to any such pollution. Such a situation shall be deemed to exist where no adequate or practical method of disposal, control, or treatment is known for the particular waste or air contaminant for which such person is responsible, or where the cost of any such known method of disposal, control or treatment is unduly burdensome in comparison with the pollution abatement results which can be achieved, or where a known method of disposal, abatement, or treatment cannot be adopted because of financial inability (due to statutory restriction on borrowing power or otherwise), or where there is reason to believe that diligent research and experimentation is being carried on to such an extent as to justify postponement of the adoption of relatively inefficient known methods of disposal, abatement, or treatment until further opportunity is given for the discovery of more effective methods. The burden of proof as to any of such conditions or any other conditions alleged to exist as a reason for the nonissuance of a special order or for extension of the time of compliance therewith shall be upon the person alleging such conditions.

(c) Procedure as to Special Orders.—No special order shall be issued by the Board (unless issued upon the consent of a person affected thereby) except after a hearing in accordance with the procedural requirements specified in § 143-215.4 and in any applicable rules of procedure of the Board. Any special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(d) Appeals.—Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of section 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Board shall be final and binding.

(e) Encouragement of Voluntary Action.—The powers conferred by this section are granted for the purpose of enabling the Board to carry out a state-wide program of water and air pollution abatement to the end that ultimately the purposes of this article will be achieved. It is the intent of this section, however, that the Board should seek to obtain the cooperative effort of all persons contributing to each situation involving water or air pollution in remedying such situation, and that the powers granted by this section shall be exercised only when the objective of this section cannot be otherwise achieved within a reasonable time.

(f) Equality of Enforcement Action.—It is the intent of this article that a comprehensive all-inclusive effort be made to accomplish the purpose of this article and to that end it is specifically provided that whenever more than one person is found to be responsible for a condition involving pollution of the air of any area of the State or water of any segment of any particular water as identified and classified under §§ 143-214.1 and 143-215 that the Board shall endeavor to obtain the cooperative effort of all such persons and that if this cannot be accomplished and the Board deems it necessary to take enforcement action to correct such pollution, by invoking the power granted by this article, such action shall be taken against all persons who share responsibility for such condition, to the extent that such persons have not voluntarily undertaken satisfactory remedial measures or have not agreed, by consenting to the issuance of special orders pursuant to this section to undertake such measures.

When an order of the Board to abate a water or air pollution problem is served upon a municipality, upon a metropolitan sewerage district, or upon a sanitary district, the governing board of such municipality, metropolitan sewerage district, or sanitary district shall, unless said order be reversed on appeal, proceed to provide funds, using any or all means necessary and available therefor by law, by issuance of bonds secured by the full faith and credit of such municipality or district or by issuance of revenue bonds or otherwise, for financing the cost of all things necessary for full compliance with said order and shall thereby comply with said order: Provided, nothing herein shall be construed to supersede or modify the provisions of the Local Government Act or of the Revenue Bond Act of 1938 with respect to approval or disapproval of bonds by the Local Government Commission and to the sale of bonds by said Commission.

(g) Voluntary Projects; Applications for Certificate of Approval; Installation of Treatment Works or Air Cleaning Devices and Approval Thereof.—Prior to the effective date applicable to any watershed or established for any air quality standards or emission control standards, any person who is discharging or who proposes to discharge sewage, industrial waste, or other waste into any waters of the State or who is discharging or who proposes to discharge any air contaminants into the air of the State may submit to the Board proposed plans for the installation of treatment works with respect to such sewage, industrial waste or other waste, or for the installation of air cleaning devices, with respect to such air cantaminants and apply to the Board for approval thereof. Such applications shall be in such form as the Board may prescribe in its rules of procedure, shall describe in precise detail the nature and volume of the sewage, industrial waste, other waste, or air contaminant which the applicant discharges or proposes to discharge, and shall contain or be supplemented by any information or plans and specifications whatsoever which the Board may request. The applicant may submit the opinion of any independent expert as to the probable effectiveness and results of such treatment works or air cleaning devices and the Board may request that the opinion of experts or additional experts be obtained in any case where it considers the same necessary, the expense in connection therewith to be borne by the applicant. Such an application may be filed by any person irrespective of whether any proceedings involving such person have been taken or are pending under any other provision of this article.

(h) Voluntary Projects, Conditions for Issuance of Certificate. — The Board shall make a thorough investigation of any application filed pursuant to this section before acting thereon, and may require the applicant to submit any statements in support of such application under oath. The Board shall not issue a certificate of approval to any applicant, unless it finds that the proposed treatment works or air cleaning devices, if installed and operated in accordance with the plans submitted to the Board:

(1) Will provide an effective method of preventing or abating actual or potential pollution of the waters or air into which the applicant is dis-

charging or proposes to discharge any air contaminants or sewage, industrial waste, or other waste; and

(2) Will require such expenditure by the applicant, in relation to the air cleaning or waste treatment problem to be remedied and the size and nature of the applicant's activities resulting in such problem, that it is fair to give the applicant reasonable protection against being required by law, at some later date, to make further capital expenditures in connection with the same air cleaning or waste treatment problem.

(i) Voluntary Projects, Effect of Certificate of Approval.—If the Board approves the proposed air cleaning devices or waste treatment works, with any modifications it may recommend, it shall have the power to issue to the applicant a certificate of approval which shall have the following effect and be subject to the following limitations:

(1) Such certificate shall give the person to whom it is issued binding assurance that, for the period specified in the certificate and so long as such person complies with all the terms of the certificate, he will not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water or air pollution, for the purpose of alleviating or eliminating any pollution or alleged pollution resulting from the sewage, industrial waste, other waste, or air contaminants, which such person is discharging into any water or the atmosphere.

(2) Such certificate shall be effective from the date of its issuance for such period of time as the Board deems fair and reasonable in the light of all the circumstances.

(3) Such certificate shall provide that it shall become void unless the applicant completes the proposed air cleaning devices or waste treatment works within a time limit specified in such certificate, and unless the proposed air cleaning devices or waste treatment works are constructed and at all times operated in accordance with the plans and specifications approved by the Board pursuant to this section.

(4) Such certificate shall be effective only with respect to the nature and volume of air contaminants or sewage, industrial waste or other waste described in the application or in the certificate itself after treatment by the proposed treatment works or air cleaning devices.

(5) Such certificate shall inure to the benefit of any successors or assigns of the applicant subject to the same conditions as are applicable to the applicant.

(6) Such certificate may impose any other limitations on its effectiveness as the Board may deem necessary or appropriate.

(j) Voluntary Projects, Procedure.—The Board by rules of procedure, not inconsistent with this article, may specify any further rules applicable to the granting of certificates of approval pursuant to this section. Any action by the Board on an application for a certificate of approval is a matter of discretion and consequently there shall be no right to a hearing nor to an appeal with respect to any refusal of the Board to grant any certificate of approval, or to the terms thereof. The Board shall have power to entertain and act on applications for modification of any certificate of approval. The Board shall have no power to revoke or modify a certificate of approval which has been issued, except by agreement, or except where the terms of such certificate have been violated or have not been fulfilled.

(k) Nonvoluntary Projects, Effect of Compliance.—Any person who installs a treatment works or an air cleaning device for the purpose of alleviating or eliminating water or air pollution in compliance with the terms of, or as a result of conditions specified in, a permit issued pursuant to § 143-215.1 or a special order issued pursuant to this section or a final decision of the Board or a court rendered decision pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water or air pollution, for a period to be fixed by the Board or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order or decision or the conditions of such permit become finally effective, if:

(1) The treatment works or air cleaning devices result in the elimination or alleviation of water or air pollution to the extent required by such permit, special order or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order or decision within the time limit, if any, specified thereby or as the same may be extended, and thereafter remains in compliance. (1951, c. 606, 1955, c. 1131, s. 2; 1967, c. 892, s. 1.)

Quoted in Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ **143-215.3. General powers of Board; auxiliary powers.**—(a) In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Board shall have the power:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed in the administration of this Article: Provided, that no regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-215.4;

(2) To conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties;

(3) To conduct public hearings in accordance with the procedures prescribed by this Article;

(4) To delegate such of the powers of the Board as the Board deems necessary to one or more of its members, to its director, assistant director, or to any other qualified employee of the Board; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Board; and provided further that the Board shall not delegate to persons other than its own members and its own qualified employees the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case

of an emergency under subsection (a)(12) for the abatement of existing water or air pollution. Any employee of the Board to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board for decision;

(5) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business, as the Board may deem necessary for the enforcement of any of the provisions of this Article or of any official actions of the Board, including proceedings to enforce subpoenas or for the punishment of contempt of the Board;

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To investigate any killing of fish and wildlife which, in the opinion of the Board, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Board may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Board and the North Carolina Wildlife Resources Commission or the North Carolina Department of Conservation and Development, whichever has jurisdiction over the fish or wildlife destroyed, to be the replacement costs thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Board shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as it deems proper and reasonable, and if no settlement is reached within a reasonable time, the Board shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Board on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery had, less the cost of investigations, recovered and retained or otherwise disbursed by the Board to the appropriate investigating agencies, shall be paid to the appropriate State agency to be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) To make a continuing study of the effects of the emission of air con-

taminants from motor vehicles on the quality of the outdoor atmosphere of the State and the several areas thereof, and make recommendations to the General Assembly and other appropriate public and private bodies for the control of such air contaminants.

(9) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air or water pollution source, air cleaning device or waste disposal system for the control of air contaminants or waste discharges concerning the efficacy of such device or disposal system, or the air or water pollution problem which may be related to such source, device or disposal system; provided, however, that nothing in any such consultation shall be construed to relieve any person from compliance with this Article, rules and regulations adopted pursuant thereto, or any other provision of law.

(10) To encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide such local units technical and consultative assistance to the maximum extent possible.

(11) Local Air Pollution Control Programs.

a. To review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and any applicable standards and rules and regulations pursuant thereto. The Board shall certify any local program which:

1. Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article, and the standards and rules and regulations issued pursuant thereto; provided, however, the Board upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Board;
2. Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;
3. Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and
4. Is approved by the Board as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

b. No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of subdivision (11) of subsection (a) of this section and is so certified by the Board.

c. If the Board finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Board may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration.

d. 1. If the Board has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this Article, the Board shall, upon due notice, conduct a hearing on the matter.

2. If, after such hearing the Board determines that an existing local air pollution control program or one which has been certified by the Board is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

3. If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Board shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.

4. If the Board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

5. Any municipality or county in which the Board administers its air pollution control program pursuant to paragraph 3 of this subdivision may, with the approval of the Board, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Board.

6. Nothing in this Article shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article for certification by the Board as an approved local air pollution control program. Any certification required from the Board shall be deemed granted unless the Board takes specific action to the contrary.

7. Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is estab-

lished or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Board. The Board shall approve any such application if it is consistent with this Article and other applicable requirements of law.

8. Notwithstanding any other provision of this section, if the Board determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Board, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emissions of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary.

e. Local air pollution control programs authorized.—1. The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article, subject to the approval of the Board of Water and Air Resources, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

i. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

ii. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

iii. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

iv. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Board of Water and Air Resources; and administration of such rules, regulations and standards in accordance with provisions of this subdivision.

v. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

vi. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

2. Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the State Board of Water and Air Resources and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.
3. The penalty for violation of any of the requirements contained in such ordinances, resolutions, rules or regulations shall, upon conviction, be a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days, except that the penalty for violation of an order for the abatement of air pollution issued by the governing body after notice and hearing shall, upon conviction, be a fine of not more than two hundred fifty dollars ($250.00) or imprisonment for not more than 30 days. Each day in violation shall constitute a separate offense and shall be subject to the foregoing penalties.
4. Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same.
5. In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.
6. Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 33 of

Chapter 143, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

f. Administration of county or municipal air pollution control programs.—Subject to the approval of the Board of Water and Air Resources as provided in this Article, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:

1. Establishing a program under the administration of the duly elected governing body of the county or municipality;
2. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;
3. Appointing an air pollution control board as provided in this section, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and
4. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

g. Creation and administration of regional air pollution control programs.—In addition to any other powers provided by law and subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Board of Water and Air Resources, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Board of Water and Air Resources for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the assistant director, with the approval of the director and the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Board shall fix a place and time for a hearing before the Board to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Board shall either affirm, modify or set aside the order of the assistant director.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the assistant director finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the approval of the director and the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this provision shall apply.

Nothing in this subsection shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

(b) Research Functions.—The Board shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Board may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Board shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this article. All State departments shall advise with and cooperate with the Board on matters of mutual interest,

(c) Relation with the Federal Government.—The Board as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control.

(d) Relations with Other States.—The Board may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8.)

Cross Reference. — As to powers and duties of Board under the North Carolina Well Construction Act, see §§ 87-83 to 87-96.

Editor's Note. — The 1969 amendment added e, f and g to subdivision (11) of subsection (a).

The 1971 amendment, effective July 1, 1971, added subsection (a)(11)d8 and rewrote subsection (a)(11)e1iv.

For note on control of pesticides, see 49 N.C.L. Rev. 529 (1971).

Authority of Local Air Pollution Control Program.—See opinion of Attorney General to Mr. W.E. Knight, N.C. Department of Water and Air Resources, 2/23/70.

§ 143-215.4. General provisions as to procedure; seal.—(a) Persons Entitled to Notice, Mailing List.—In any proceeding pursuant to §§ 143-215.1, 143-215.2, 143-215.3, the Board shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to §§ 143-214.1 and 143-215, the Board shall give notice as provided by that section, and it shall also give notice of all its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Board to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Board, ask to be permanently recorded on such mailing list.

(b) Publication and Codification of Board's Regulations and Rules.—All official acts of the Board which have or are intended to have general application effect shall be incorporated either in the Board's official regulations (applying and interpreting this article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Board be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Secretary of State. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Board in sufficient numbers to satisfy all reasonable requests therefor. The Board shall codify its regulations and rules and from time to time shall revise and bring up to date such codifications.

(c) Notices.—All notices which are required to be given by the Board or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto, including the Board. The date of receipt for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Board may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Board by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(d) Hearings.—The following provisions, together with any additional provisions not inconsistent herewith which the Board may prescribe, shall be applicable in connection with hearings pursuant to this article, except where other provisions are applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to §§ 143-215.1 and 143-215.2 or 143-215.3, except those held pursuant to subsection (a) (12) of § 143-215.3, whether called at the instance of the Board or of any person, shall be held upon not less than 30 days' written notice given by the Board to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings shall be before the Board or its authorized agent or agents, and the hearing shall be open to the public. The Board, or its authorized agents, shall have the authority to administer oaths.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Board or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Board.

(4) The Board shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) Subpoenas or subpoenas duces tecum issued by the Board, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Board, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the Board, as the case may be, at whose instance the hearing is being held.

(7) No decision or order of the Board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(8) Following any hearing, the Board shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Board proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Board's ruling with respect to each such requested finding of fact and conclusion of law.

(9) All orders and decisions of the Board shall set forth separately the Board's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Board is based.

(10) As previously recited above, the Board shall have the authority to adopt a seal which shall be the seal of said Board and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Board or its minutes may be certified by the director or assistant director of the Department under his hand and the seal of the Board and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Board shall have

the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Board or by any other person or interested party where material, relevant and competent. (1951, c. 606; 1967, c. 892, s. 1.)

§ 143-215.5. Judicial review.—Any person against whom any final order or decision has been made except where no appeal is allowed as provided by § 143-215.2 (j) shall have a right of appeal to the Superior Court of Wake County or of the county where the order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the Board shall send a certified transcript of all testimony and exhibits introduced before the Board, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the Supreme Court. No bond shall be required of the Board to the Supreme Court.

(1) Upon appeal filed by any party, the Board shall forthwith furnish each party to the proceeding with a copy of the certified transcript and exhibits filed with the Board. A reasonable charge shall be paid the Board for said copies.

(2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript. (1951, c. 606; 1967, c. 892, s. 1.)

§ 143-215.6. Violations and penalties; acts which constitute violations.—(a) After the effective date applicable to any watershed or for the application of any air quality standards or emission control standards it shall be a violation of this article for any person within such watershed; the State as a whole or one or more areas of the State:

(1) To perform any of the acts set forth in § 143-215.1 (a) or 143-215.1 (b) without first obtaining a permit as required by § 143-215.1, or to perform any such acts in disregard of the terms of any such permit.

(2) To fail to comply with the terms of any special order issued by the Board to such person which has become final pursuant to § 143-215.2 or any order issued pursuant to § 143-215.3 (a) (12).

No person, however, shall be charged with nor convicted of any violation under the provisions hereof by reason of any act of God, war, strike, riot, or other circumstances over which such person has no control.

(b) Penalties for Violations.—Any person who shall be adjudged to have violated this article shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty: Provided, however, that where a vote of the people is required to effectuate the intent and purpose of this article by a municipality or other political subdivision of the State and the vote on the referendum is against the means or machinery for carrying the same into effect, then, and only then, this section shall not apply to the elected officials or to any duly authorized appointed officials or employees, of said municipality or political subdivision. (1951, c. 606; 1967, c. 892, s. 1.)

§ 143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.—This article shall not be construed as amending, repealing, or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of public water supplies, as now administered by the State Board of Health; nor shall the provisions of this article be construed as being applicable to or in any wise affecting the authority of the North Carolina State Board of Health to control the sanitary disposal of sewage as provided in article 13 of chapter 130 of the General Statutes of North Carolina, or as affecting the powers, duties and authority of city, county, county-city and district health departments usually referred to as local health departments or as affecting the charter powers, or other lawful authority of municipal corporations, to pass ordinances in regard to sewage disposal. (1951, c. 606; 1957, c. 1357, s. 11; 1967, c. 892, s. 1.)

§ 143-215.8. Injunctive relief.—Upon violation of any of the provisions of this Article or of any regulation of the Board adopted under the authority of this Article, the director or the assistant director of the Board may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the superior court in the name of the State upon the relation of the director or the assistant director of the Board for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same. (1967, c. 892, s. 1; 1971, c. 111, s. 2.)

Editor's Note. — The 1971 amendment inserted "or of any regulation of the Board adopted under the authority of this Article" in the first sentence, substituted "any penalty" for "the penalty" in that sentence, and substituted "any penalty" for "the penalty" in the second sentence.

Session Laws 1971, c. 111, s. 3, provides: "All laws and clauses of laws in conflict with this act are hereby repealed."

§ 143-215.9. Restrictions on authority of the Board.—Nothing in this article shall be construed to:

(1) Grant to the Board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops;

(2) Affect the relations between employers and employees with respect or arising out of conditions of air contamination or air pollution;

(3) Supersede or limit the applicability of any law, rules and regulations or ordinances relating to industrial health or safety. (1967, c. 892, s. 1.)

§ 143-215.10. Transfer of all powers and duties of Department of Water Resources, including personnel and records of the Board; title of article.—(a) On and after July 1, 1967, the Board of Water Resources shall cease to exist, and the terms of office of each of the members of the Board of Water Resources shall terminate and expire on July 1, 1967. General Statutes 143-353 is hereby repealed but said repeal shall not become effective until July 1, 1967. On and after July 1, 1967, and as soon as reasonably practicable, all records, papers, documents, files, supplies, funds, credits, appropriations, claims, demands, liabilities, and all personnel, quarterly allotments, all executory contracts of the Department of Water Resources, the Board of Water Resources, the Division of Water Pollution Control and of the State Stream Sanitation Committee shall be transferred, conveyed, assigned, delivered and made over to the Board, and are hereby transferred, delivered, conveyed and assigned to the Board as of said date of July 1, 1967, and on and after said date the said Board shall be entitled to the exclusive possession, custody and control of all of said items and categories referred to above, and all the transfers ordered under this section shall be made under the supervision of the Department of Administration, which shall be the final authority as to all differences and disputes arising incident to such transfers. Insofar as practicable the expenses necessary to carry out the provisions of this article and of such transfers made under authority of same shall be provided out of appropriations made to the presently existing agencies whose functions are to be transferred to the Board, and in the event additional funds are necessary to carry out the provisions of this article, the Governor, with the approval of the Council of State, is hereby authorized to appropriate such additional funds from the Contingency and Emergency Fund.

(b) No transfer of functions to the Board as provided for in this section and in this article shall affect any action, suit, proceeding, prosecution, contract, lease or other transaction, classification, standards, orders, permits or other approval documents issued or reports involving any function which was initiated, undertaken or entered into prior to or pending the time of the transfer, and the title or name of the department or board shall be substituted for the agency from which the function was transferred, and so far as practicable the procedure provided for in this article shall be employed in completing or disposing of the matter. In all documents, papers, reports, proceedings, suits or actions at law wherever apt and appropriate the name of the Board shall be substituted for and in lieu of the name of any of the agencies transferred to the Board under the provisions of this article.

(c) All of the powers, duties, authority, responsibilities and functions of the Department of Water Resources and of the Water Resources Board, as set forth in article 38 of chapter 143 of the General Statutes, are transferred to and vested in the Board as of July 1, 1967, and on and after said date all of said powers and duties of the Water Resources Board, as set forth in G.S 143-354, G.S. 143-355. as well as any other powers and duties set forth in article 38 of chapter 143, are hereby adopted and made a part of this article as if herein copied and set forth except G.S. 143-348, 143-349, 143-351, and 143-353, which are repealed under conditions set forth above.

(d) This part shall be known and shall be cited as "The North Carolina Water and Air Resources Act." (1967, c. 892, s. 2.)

Part 2. Regulation of Use of Water Resources.

§ 143-215.11. Short title.—This part shall be known and may be cited as the Water Use Act of 1967. (1967, c. 933, s. 1.)

Cross Reference.—See note to § 143-211.

§ 143-215.12. Declaration of purpose.—It is hereby declared that the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation in order to conserve these resources and to provide and maintain conditions which are conducive to the development and use of water resources. (1967, c. 933, s. 2.)

§ 143-215.13. Declaration of capacity use areas. — (a) The Board may declare and delineate from time to time, and may modify, capacity use areas of the State where it finds that the use of ground water or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest.

(b) Within the meaning of this part "a capacity use area" is one where the Board finds that the aggregate uses of ground water or surface water, or both, in or affecting said area (i) have developed or threatened to develop to a degree which requires coordination and regulation, or (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.

(c) The Board may declare and delineate capacity use areas in accordance with the following procedures:

(1) Whenever the Board believes that a capacity use situation exists or may be emerging in any area of the State, it may direct the Department to investigate and report to the Board thereon.

(2) In conducting its investigation the Department shall consult with all interested persons, groups and agencies; may retain consultants; and shall consider all factors relevant to the conservation and use of water in the area, including established or pending water classifications under the Stream Sanitation Law and the criteria for such classifications. Following its investigation the Department shall render a written report to the Board. This report shall include the Department's findings and recommendations as to whether the water use problems of the area involve surface waters, ground waters or both; whether effective measures can be employed limited to surface water or to ground water; and whether timely action by any agency or person may preclude the need for additional regulation at that time. The report shall also include such other findings and recommendations as the Department deems appropriate, including recommended boundaries for any capacity use area that may be proposed.

(3) If the Board finds, following its review of the departmental report (or thereafter following its evaluation of measures taken falling short of regulation) that a capacity use area should be declared, it may adopt an order declaring said capacity use area. Prior to adopting such an order the Board shall give notice of its proposed action and shall conduct one or more public hearings with respect to such proposed action.

(4) Such notice shall be given not less than 30 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Board proposes to take. The notice shall either include details of such proposed action, or where such proposed action is too lengthy for publication the notice shall specify that copies of such detailed proposed action shall be obtained on request from the office of the Board in sufficient quantity to satisfy the requests of all interested persons.

(5) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Board pursuant to the provisions of § 143-215.15.

(6) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Board on or before the first date set for the hearing. The Board is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Board shall permit anyone who so desires to file a written argument or other statement with the Board in relation to any proposed action of the Board any time within 30 days following the conclusion of any public hearing or within any such additional time as the Board may allow by notice given as prescribed in this section.

(7) Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action by the Board pursuant to this paragraph, the Board shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. The Board is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modification or revocation, however, to be subject to the procedural requirements of this part, including notice and

hearing. If the Board finds and orders that a capacity use area shall be declared, its order shall include a delineation of the boundary of said area, and the Board shall instruct the Director of the Department to prepare proposed regulations consistent with the provisions of this part and commensurate with the degree of control needed from among the classes of permissible regulations set forth in § 143-215.14. (1967, c. 933, s. 3.)

§ 143-215.14. Regulations within capacity use areas; scope and procedures.—(a) Following the declaration of a capacity use area by the Board, it shall prepare proposed regulations to be applied in said area, containing such of the following provisions as the Board finds appropriate concerning the use of surface waters or ground waters or both:

(1) Provisions requiring water users within the area to submit reports not more frequently than at 30-day intervals concerning quantity of water used or withdrawn, sources of water and the nature of the use thereof.

(2) With respect to surface waters, ground waters, or both: Provisions concerning the timing of withdrawals; provisions to protect against or abate salt water encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use.

(3) With respect to ground waters: Provisions concerning well spacing controls; and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on the capacities and characteristics of the aquifer.

(4) Such other provisions not inconsistent with this part as the Board finds necessary to implement the purposes of this part.

(b) The Board shall conduct one or more hearings upon the proposed regulations, upon notice, in accordance with the requirements of subdivisions (4)-(6) of § 143-215.13 (c). Upon completion of the hearings and consideration of submitted evidence and arguments with respect to any proposed regulation, the Board shall adopt its final action with respect thereto, and shall publish such final action as part of its official regulations. The Board is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modifications or revocations, however, to be subject to the procedural requirements of this part, including notice and hearing. (1967, c. 933, s. 4.)

§ 143-215.15. Permits for water use within capacity use areas—procedures.—(a) In areas declared by the Board to be capacity use areas no person shall (after the expiration of such period, not in excess of six months, as the Board may designate) withdraw, obtain, or utilize surface waters or ground waters or both, as the case may be, in excess of 100,000 gallons per day for any purpose unless such person shall first obtain a permit therefor from the Board.

(b) When sufficient evidence is provided by the applicant that the water withdrawn or used from a stream or the ground is not consumptively used, a permit therefor shall be issued by the Board without a hearing and without the conditions provided in subsection (c) of this section. Applications for such permits shall set forth such facts as the Board shall deem necessary to enable it to establish and maintain adequate records of all water uses within the capacity use area.

(c) In all cases in which sufficient evidence of a nonconsumptive use is not presented the Board shall notify each person required by this part to secure a permit of the Board's proposed action concerning such permit, and shall transmit with such notice a copy of any permit it proposes to issue to such persons, which permit will become final unless a request for a hearing is made within 15 days from the date of service of such notice. The Board shall have the power: (i) to grant such permit with conditions as the Board deems necessary to implement the regulations adopted pursuant to § 143-215.14; (ii) to grant any temporary permit for such period of time as the Board shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the Board's regulations applicable to such capacity use area; (iii) to modify or revoke any permit upon not less than 60 days' written notice to any person affected; and (iv) to deny such permit if the application therefor or the effect of the water use proposed or described therein upon the water resources of the area is found to be contrary to public interest. Any water user wishing to contest the proposed action shall be entitled to a hearing upon request therefor.

(d) In any proceeding pursuant to this section or § 143-215.16 the Board shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to § 143-215.13 or 143-215.14 the Board shall give notice as provided by these sections, and it shall also give notice of all its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Board to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Board ask to be permanenly recorded on such mailing list.

(e) All notices which are required to be given by the Board or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto, including the Board. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Board may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Board may prescribe the form and content of any particular notice.

(f) The following provisions shall be applicable in connection with hearings pursuant to this part:

(1) Any hearing held pursuant to this section or § 143-215.16, whether called at the instance of the Board or of any person, shall be held upon not less than 30 days' written notice given by the Board to any person who is a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings under this part shall be before the Board, or before one or more of its own members or before one or more of its own qualified employees, and shall be open to the public. Any member or employee of the Board to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board for decision.

(3) A full and complete record of all proceedings at any hearing under this part shall be taken by a reporter appointed by the Board or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Board.

(4) The Board and its duly authorized agents shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) The Board, or the duly authorized agent of such Board, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.

(6) Subpoenas issued by the Board, in connection with any hearing under this part shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a subpoena issued by the Board, application may be made to the superior court of the appropriate county for enforcement thereof.

(7) The burden of proof at any hearing under this part shall be upon the person or the Board, as the case may be, at whose instance the hearing is being held.

(8) No decision or order of the Board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(9) Following any hearing, the Board shall afford the parties thereto a reasonable opportunity to submit within 30 days or within such additional time as prescribed by the Board, proposed findings of fact and conclusions of law and any brief in connection therewith.

(10) All orders and decisions of the Board shall set forth separately the Board's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Board is based.

(11) The Board shall have the authority to adopt a seal which shall be the seal of said Board and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Board or its minutes may be certified by the Director or assistant director of the Department under his hand and the seal of the Board and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Board shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Board or by any other person or interested party where material, relevant and competent.

(g) Any person against whom any final order or decision has been made except where no appeal is allowed as provided by § 143-215.2 (j) shall have a right of appeal to the Superior Court of Wake County or of the county where the order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the Board shall send a certified transcript of all testimony and exhibits introduced before the Board, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the Supreme Court. No bond shall be required of the Board to the Supreme Court.

(1) Upon appeal filed by any party, the Board shall forthwith furnish each

party to the proceeding with a copy of the certified transcript and exhibits filed with the Board. A reasonable charge shall be paid the Board for said copies.

(2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript.

(h) In adopting any regulations pursuant to the provisions of § 143-215.14, and in considering permit applications, revocations or modifications under this section, the Board shall consider:

(1) The number of persons using an aquifer or stream and the object, extent and necessity of their respective withdrawals or uses;
(2) The nature and size of the stream or aquifer;
(3) The physical and chemical nature of any impairment of the aquifer or stream, adversely affecting its availability or fitness for other water uses (including public use);
(4) The probable severity and duration of such impairment under foreseeable conditions;
(5) The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;
(6) The kinds of businesses or activities to which the various uses are related;
(7) The importance and necessity of the uses claimed by permit applicants (under this section), or of the water uses of the area (under § 143-215.14) and the extent of any injury or detriment caused or expected to be caused to other water uses (including public use);
(8) Diversion from or reduction of flows in other water courses or aquifers; and
(9) Any other relevant factors. (1967, c. 933, s. 5.)

§ **143-215.16. Permits for water use within capacity use areas—duration, transfer, reporting, measurement, present use, fees and penalties.**—(a) No permit under § 143-215.15 shall be issued for a longer period than the longest of the following: (i) 10 years, or (ii) the duration of the existence of a capacity use area, or (iii) the period found by the Board to be necessary for reasonable amortization of the applicant's water withdrawal and water using facilities. Permits may be renewed following their expiration upon compliance with the provisions of § 143-215.15.

(b) Permits shall not be transferred except with the approval of the Board.

(c) Every person in a capacity use area who is required by this part to secure a permit shall file with the Board in the manner prescribed by the Board a certified statement of quantities of water used and withdrawn, sources of water, and the nature of the use thereof not more frequently than 30-day intervals. Such statements shall be filed on forms furnished by the Board within 90 days after the adoption of an order by the Board declaring a capacity use area. Water users in a capacity use area not required to secure a permit shall comply with procedures established to protect and manage the water resources of the area. Such procedures shall be adapted to the specific needs of the area, shall be within the provisions of this and other North Carolina water resource acts, and shall be adopted after public hearing in the area. The requirements embodied in the two preceding sentences shall not apply to individual domestic water use.

(d) If any person who is required to secure a permit under this part is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different conditions than has been authorized by the Board, the Board shall have the authority to require such person to install water meters, or some other more economical means for measuring water use acceptable to the Board. In determining the amount of water being withdrawn or used by a permit holder or applicant the Board may use the rated capacity of his pumps, the rated capacity of his cooling system, data furnished by the applicant, or the standards or methods employed by the United States Geological Survey in determining such quantities or by any other accepted method.

(e) In any case where a permit applicant can prove to the Board's satisfaction that the applicant was withdrawing or using water prior to the date of declaration of a capacity use area, the Board shall take into consideration the extent to which such prior use or withdrawal was reasonably necessary in the judgment of the Board to meet its needs, and shall grant a permit which shall meet those reasonable needs. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(f) The Board shall also take into consideration in the granting of any permit the prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the Board within a reasonable time after June 27, 1967. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(g) It is the intention of the General Assembly that if the provisions of subsection (e) or subsection (f) of this section are held invalid as a grant of an exclusive or separate emolument or privilege, within the meaning of Article I, § 7 of the North Carolina Constitution, the remainder of this part shall be given effect without the invalid provision or provisions.

(h) Pending the issuance or denial of a permit pursuant to subsection (e) or (f) of this section, the applicant may continue the same withdrawal or use which existed prior to the date of declaration of the capacity use area. (1967, c. 933, s. 6.)

Editor's Note. — The reference to the Constitution in subsection (g) is to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. I, § 32.

§ 143-215.17. Violations.—(a) Penalties for Violations.—Any person who shall be adjudged to have violated any provision of this part shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each violation. In addition, if any person is adjudged to have committed such violation wilfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Civil Actions.—In addition, upon violation of any of the provisions of this part, or the regulations of the Board hereunder, the Director of the Department may, either before or after the institution of proceedings for the collection of the penalty imposed by this part for such violation, institute a civil action in the superior court in the name of the State upon relation of the Director of the Department for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this part for any violation of the same (1967, c. 933, s. 7.)

§ 143-215.18. Map or description of boundaries of capacity use areas.—(a) The Board in designating and the Department in recommending the boundaries of any capacity use area may define such boundaries by showing them on a map or drawings, by a written description, or by any combination thereof, to be designated appropriately and filed permanently with the Department. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries shall be made under the direction of the Director of the Department. Photographic, typed or other copies of such map or description, certified by the Director, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. If the boundaries are changed pursuant to other provisions of this part, the Department may provide for the redrawing of any such map. A redrawn map shall supercede for all purposes the earlier map or all maps which it is designated to replace.

(b) The Department shall file with the Secretary of State a certified copy of the map, drawings, description or combination thereof, showing the boundaries of any capacity use area designated by the Board; and a certified copy of any redrawn or altered map or drawing, and of any amendments or additions to written descriptions, showing alterations to said boundaries. The filings required by this subsection shall constitute compliance with the requirements of article 18 of chapter 143 of the General Statutes. (1967, c. 933, s. 8.)

§ 143-215.19. Rights of investigation, entry, access and inspection.—The Board shall have the right to conduct such investigations as may reasonably be necessary to carry out its duties prescribed in this part, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition, withdrawal or use of any waters, investigating water sources, or investigating the installation or operation of any well or surface water withdrawal or use facility, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the installation or operation of any well or surface water withdrawal or use facility; provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of a lawful inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties consistent with the provisions of this part. (1967, c. 933, s. 9.)

§ 143-215.20. Rules and regulations.—The Board may adopt and modify from time to time rules and regulations consistent with the provisions of this part to implement the provisions of this part. All such rules and regulations, and modifications thereof, shall be filed with the Secretary of State as required by article 18 of chapter 143 of the General Statutes. (1967, c. 933, s. 10.)

§ 143-215.21. Definitions.—Unless the context otherwise requires, the following terms as used in this part are defined as follows:

(1) "Area of the State" means any municipality or county or portion thereof or other substantial geographical area of the State as may be designated by the Board.

(2) "Board" means the Board of Water Resources or its successor.

(3) "Consumptive use" means any use of water withdrawn from a stream or the ground other than a "nonconsumptive use," as defined in this part.

(4) "Department" means the Department of Water Resources, or its successor.

(5) "Nonconsumptive use" means (i) the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken; or, if the user owns both sides of the stream at the point of withdrawal, the water is returned to the stream upstream of the next property below the point of diversion on either side of the stream; (ii) the use of water withdrawn from a ground water system or aquifer in such a manner that it is returned to the ground water system or acquifer from which it was withdrawn without substantial diminution in quan-

tity or substantial impairment in quality at or near the point from which it was withdrawn; (iii) provided, however, that (in determining whether a use of ground water is nonconsumptive) the Board may take into consideration whether any material injury or detriment to other water users of the area by reason of reduction of water pressure in the acquifer or system has not been adequately compensated by the permit applicant who caused or substantially contributed to such injury or detriment.

(6) "Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this State or any other state or country.

(7) "Waters" shall mean any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction. (1967, c. 933, s. 11.)

§ **143-215.22. Law of riparian rights not changed.** — Nothing contained in this part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State. (1967, c. 933, s. 12.)

Part 3. Dam Safety Law.

§ **143-215.23. Short title.**—This part shall be known as may be cited as the Dam Safety Law of 1967. (1967, c. 1068, s. 1.)

Editor's Note. — Section 18 of Session Laws 1967, c. 1068, makes this part effective Jan. 1, 1968.

§ **143-215.24. Declaration of purpose.**—It is the purpose of this part to provide for the certification and inspection of certain dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of such dams; to prevent injuries to persons, damage to property and loss of reservoir storage; and to ensure maintenance of stream flows below such dams of adequate quantity and quality. (1967, c. 1068, s. 2.)

§ **143-215.25. Definitions.**—As used in this part, unless the context otherwise requires:

(1) "Board" means the North Carolina Board of Water Resources.

(2) "Dam" means the dam (and appurtenant works) for the impoundment or diversion of water, except that it shall not include:

  a. Any dam constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or any other department or agency of the United States government, when such department or agency designed or approved plans and supervised construction.

  b. Any dam or flood retarding structure constructed with financial assistance from the United States Soil Conservation Service, when said agency designed or approved plans and supervised construction.

  c. The exemptions conferred by items a and b of this subdivision shall cease when the supervising federal agency relinquishes authority for operation and maintenance to a local entity.

d. Any dam licensed by the Federal Power Commission, or for which a license application is pending with the Federal Power Commission, or for use in connection with electric generating facilities to be constructed pursuant to a certificate of public convenience and necessity from the North Carolina Utilities Commission.

e. Any dam under a single private ownership, providing protection only to land or other property under such ownership, and posing no threat to life or property below the property under such single ownership.

f. Any dam less than 15 feet in height (measured from original stream bottom to crest of dam) or whose impoundment capacity is less than 10 acre-feet, or any dam costing less than five thousand dollars ($5,000.00).

(3) "Department" means the North Carolina Department of Water Resources.

(4) "Minimum stream flows" or "minimum flows" means stream flows of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the State Stream Sanitation Committee under the North Carolina Stream Sanitation Law and applicable to the waters affected by the project under consideration. In order to ensure that such classifications and standards shall be met and maintained, the Department may impose such conditions and requirements in orders and written approvals issued under this part as, in its judgment, may be necessary to this end, including conditions and requirements relating to the release or discharge of designated flows from impoundments, the location or design of water outlets for impoundments and of water intakes, the amount and timing of withdrawal of water from a reservoir, and the construction of submerged weirs or other devices designed to satisfy minimum stream flow requirements.

(5) "Person" includes any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or of any other state or country. (1967, c. 1068, s. 3.)

§ 143-215.26. Construction of dams.—(a) No person shall begin the construction of any dam, as defined by this part, until at least 10 days after filing with the Department a statement concerning its height, impoundment capacity, purpose, location and other information required by the Department. Persons proposing construction described in § 143-215.25, subparagraphs (2) e and f will comply with malaria control requirements of the State Board of Health. If on the basis of this information the Department is of the opinion that the proposed dam is not exempt from the provisions of this part, it shall so notify the applicant, and construction shall not be commenced until a full application is filed by the applicant and approved as provided by § 143-215.29. The Department may also require of applicants so notified the filing of such additional information as it deems necessary, including, but not limited to, streamflow and rainfall data, maps, plans and specifications. Every applicant for approval of a dam subject to the provisions of this part shall also file with the Department the certificate of an engineer or contractor legally qualified in the State of North Carolina that he is responsible for the design of the dam, and that said design is safe and adequate. Should the applicant have a professional engineering staff the certificate of a registered professional engineer member of that staff legally qualified in the State of North Carolina will constitute compliance.

(b) When an application has been completed pursuant to the preceding subsection, the Department shall refer copies of the completed application papers to the State Board of Health, the Wildlife Resources Commission, the Department of Conservation and Development, the State Highway Commission, and such other State and local agencies as it deems appropriate for review and comment. (1967, c. 1068, s. 4.)

§ **143-215.27. Repair, alteration, or removal of dam.** — (a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it shall be referred by the Department for agency review and report, as provided by subsection (b) of § 143-215.26 in the case of original construction.

(b) When repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified forthwith of the proposed repairs and of the work under way, and they shall be made to conform to its orders. (1967, c. 1068, s. 5.)

§ **143-215.28. Action by Board upon applications.** — (a) Following receipt of agency comments the Board shall approve, disapprove, or approve subject to conditions necessary to ensure safety and to satisfy minimum stream flow requirements, all applications made pursuant to this part.

(b) A defective application shall not be rejected but notice of the defects shall be sent to the applicant by registered mail. If the applicant fails to file a perfected application within 30 days the original shall be canceled unless further time is allowed.

(c) If the Board disapproves an application, one copy shall be returned with a statement of its objections. If an application is approved, the approval shall be attached thereto, and a copy returned by registered mail. Approval shall be granted under terms, conditions and limitations which the Board deems necessary to safeguard life and property.

(d) Construction shall be commenced within one year after the date of approval of the application or such approval is void. The Board upon written application and good cause shown may extend the time for commencing construction. Notice by registered mail shall be given the Board at least 10 days before construction is commenced. (1967, c. 1068, s. 6.)

§ **143-215.29. Supervision by qualified engineers; reports and modification during work.**—(a) Any project for which the Board's approval is required under §§ 143-215.26 and 143-215.27 shall be designed and supervised by an engineer legally qualified in the State of North Carolina.

(b) During the construction, enlargement, repair, alteration or removal of a dam, the Board may require such progress reports from the supervising engineer as it deems necessary.

(c) If during construction, reconstruction, repair, alteration or enlargement of any dam, the Board finds the work is not being done in accordance with the provisions of the approval and the approved plans and specifications, it shall give written notice by registered mail or personal service to the person who received the approval and to the person in charge of construction at the dam. The notice shall state the particulars in which compliance has not been made, and shall order immediate compliance with the terms of the approval, and the approved plans and specifications. The Board may order that no further construction work be undertaken until such compliance has been effected and approved by the Board. A failure to comply with the approval and the approved plans and specifications shall render the approval revocable unless compliance is made after notice as provided in this section. (1967, c. 1068, s. 7.)

§ **143-215.30. Notice of completion; certification of final approval.**—(a) Immediately upon completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be given the Board. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the Board in such detail as the Board may require.

(b) When an existing dam is enlarged, the supplementary drawings and descriptive matter need apply only to the new work.

(c) The completed work shall be inspected by the supervising engineers, and upon finding that the work has been done as required and that the dam is safe and satisfies minimum stream flow requirements, they shall file with the Board a certificate that the work has been completed in accordance with approved design, plans, specifications and other requirements. Unless the Board has reason to believe that the dam is unsafe or is not in compliance with any applicable requirement, regulation, or law, the Board shall grant final approval of the work in accordance with the certificate, subject to such terms as it deems necessary for the protection of life and property.

(d) Pending issuance of the Board's final approval, the dam shall not be used except on written consent of the Board, subject to conditions it may impose. (1967, c. 1068, s. 8.)

§ **143-215.31. Supervision over maintenance and operation of dams.**—The Board shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum stream flow requirements. The Board is hereby authorized to adopt such standards for maintenance and operation of dams as may be necessary for the purposes of this part. In its discretion the Board may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function. (1967, c. 1068, s. 9.)

§ **143-215.32. Inspection of dams.**—(a) The Board is hereby authorized at any time to inspect through consulting engineers any dam upon receipt of a written request of any affected person or agency, or upon its own motion. Within the limits of available funds the Board shall endeavor to provide for inspection of all dams at intervals of approximately five years.

(b) If the Board finds that any dam is not sufficiently strong, or is not maintained in good repair or operating condition, or is dangerous to life or property, or does not satisfy minimum stream flow requirements, the Board shall issue an order directing the owner or owners of the dam to make at his or their expense such maintenance, alteration, repair, reconstruction, change in construction or location, or removal as may be deemed necessary by the Board within a time to be limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

(c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Board, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Board may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Board may recover the costs of such measures from the owner or owners by appropriate legal action. (1967, c. 1068, s. 10.)

§ **143-215.33. Judicial review.**—If an applicant under this part, or owner of a dam which is the subject of an application, or any landowner whose property would be endangered by failure of a dam, are dissatisfied with any final order or decision of the Board issued under this part, he (or they, as the case may be) shall have a right of appeal to the superior court pursuant to the provisions of article 33 of chapter 143 of the General Statutes. (1967, c. 1068, s. 11.)

§ **143-215.34. Investigations by Department; rules and regulations; employment of consultants.**—The Department shall make such investigations and assemble such data as it deems necessary for a proper review and study of the design and construction of dams, reservoirs and appurtenances, and for such purposes may enter upon private property. The Board may adopt such rules and regulations as may be necessary to carry out the purposes of this part. The Board may employ or make such agreements with geologists, engineers, or other expert consultants and such assistants as it deems necessary to carry out the provisions of this part. (1967, c. 1068, s. 12.)

§ **143-215.35. Liability for damages.**—No action shall be brought against the State of North Carolina, the Department or Board of Water Resources or any agent or employee of such Department or Board, for damages sustained through the partial or total failure of any dam or its maintenance by reason of any supervision or other action taken pursuant to or under this part. Nothing in this part shall relieve an owner or operator of a dam from the legal duties, obligations and liabilities arising from such ownership or operation. (1967, c. 1068, s. 13.)

§ **143-215.36. Violations; penalties.**—(a) Penalties for Violations.—Any person who shall be adjudged to have violated this article shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Injunctive and Other Relief.—In addition, upon violation of any of the provisions of this part, or the regulations of the Department hereunder, the Director of the Department may, either before or after the institution of proceedings for the collection of the penalty imposed by this part for such violation, institute a civil action in the superior court in the name of the State upon relation of the Director of the Department for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this part for any violation of the same. (1967, c. 1068, s. 14.)

§ **143-215.37. Rights of investigation, entry, access and inspection.**—The Board shall have the right to conduct such investigations as it may reasonably deem necessary to carry out its duties prescribed in this part, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam or associated equipment facility or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the construction or operation of any dam: Provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. (1967, c. 1068, s. 15.)

Part 4. Federal Water Resources Development Projects.

§ **143-215.38. Short title.**—This part shall be known as and may be cited as the Federal Water Resources Development Law of 1969. (1969, cc. 724, 968.)

Editor's Note.—Session Laws 1969, c. 968, is identical to Session Laws 1969, c. 724. Both acts enacted a new part 4 of this article, relating to federal water resources development projects.

§ **143-215.39. Public policy.**—It is hereby declared the public policy of the State of North Carolina to encourage development of such river and harbor, flood control and other similar civil works projects as will accrue to the general or special benefit of any county or municipality of North Carolina or to any region of the State. To this end, it is also hereby declared that within the meaning of the North Carolina Constitution expenditures for such projects and obligations incurred for such projects are for public purposes, that county and municipal and other local government expenditures and obligations incurred therefor are necessary expenses, and that county expenditures therefor are for special purposes for which the special approval of the General Assembly is hereby given. (1969, cc. 724, 968.)

Editor's Note. — The reference to the Constitution in this section is to the Constitution adopted in 1868, as amended.

§ **143-215.40. Resolutions and ordinances assuring local cooperation.**—(a) The boards of commissioners of the several counties, in behalf of their respective counties, the governing bodies of the several municipalities, in behalf of their respective municipalities, the governing bodies of any other local government units, in behalf of their units, and the North Carolina Board of Water and Air Resources, in behalf of the State of North Carolina, subject to the approval of the Governor and the Advisory Budget Commission, are hereby authorized to adopt such resolutions or ordinances as may be required giving assurances to any appropriate agency of the United States government for the fulfillment of the required items of local cooperation as expressed in acts of Congress or congressional documents, as conditions precedent to the accomplishment of river and harbor, flood control or other such civil works projects, when it shall appear, and is determined by such board or governing body that any such project will accrue to the general or special benefit of such county or municipality or to a region of the State. In each case where the subject of such local cooperation requirements comes before a board of county commissioners or the governing body of any municipality or other local unit a copy of its final action, whether it be favorable or unfavorable, shall be sent to the Director of the Department of Water and Air Resources for the information of the Governor.

(b) Within the meaning of this part, a "local government unit" means any local subdivision or unit of government or local public corporate entity (other than a county or municipality), including any manner of special district or public authority. (1969, cc. 724, 968.)

§ **143-215.41. Items of cooperation to which localities and the State may bind themselves.**—Such resolutions and ordinances may irrevocably bind such county, municipality, other local unit, of the State of North Carolina, acting through the Board of Water and Air Resources, to the following when included as requirements of local cooperation for a federal water resources development project:

(1) To provide, without cost to the United States, all lands, easements, and rights-of-way required for construction and subsequent maintenance of the project and for aids to navigation, if required, upon the request of the Chief of Engineers, or other official to be required in the general public interest for initial and subsequent disposal of spoil, and also necessary retaining dikes, bulkheads, and embankments therefor, or the costs of such retaining works;

(2) To hold and save the United States free from damages due to the construction works and subsequent maintenance of the project;

(3) To provide firm assurances that riverside terminal and transfer facilities will be constructed at the upper limit of the modified project to permit transfer of commodities from or to plants and barges;

(4) To provide and maintain, without cost to the United States, depths in berthing areas and local access channels serving the terminals commensurate with depths provided in related project areas;

(5) To accomplish, without cost to the United States, such alterations, if any, as required in sewer, water supply, drainage, electrical power lines, and other utility facilities, as well as their maintenance;

(6) To provide, without cost to the United States, all lands, easements, rights-of-way, utility relocations and alterations, and, with the concurrence and under the direction of the State Highway Commission, highway or highway bridge construction and alterations necessary for project construction;

(7) To adjust all claims concerning water rights;

(8) To maintain and operate the project after completion, without cost to the United States, in accordance with regulations prescribed by the Secretary of the Army or other responsible federal official, board, or agency;

(9) To provide a cash contribution for project costs assigned to project features other than flood control;

(10) To prevent future encroachment which might interfere with proper functioning of the project for flood control;

(11) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional or other federal document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which counties, municipalities and the State are herein authorized to irrevocably bind themselves; it being intended to authorize counties, municipalities and the Board of Water and Air Resources in behalf of the State to comply fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned, or project reports by the Army Chief of Engineers, the Administrator of the Soil Conservation Service, the Board of Directors of the Tennessee Valley Authority, or other responsible federal official, board or agency. (1969, cc. 724, 968.)

§ **143-215.42. Acquisition of lands.**—(a) For the purpose of complying with the terms of local cooperation as specified in chapter 143, article 21, part 4, and as stipulated in the congressional document covering the particular project involved, any county, municipality, or other local government unit may acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation. A municipality, county or other local government unit may acquire such lands by any of the aforesaid means outside as well as inside its territorial boundaries, if the local governing body finds that substantial benefits will accrue to property inside such territorial boundaries as a result of such acquisition.

(b) The power of condemnation herein granted may be exercised only after:

(1) The municipality, county or other local unit makes application to the Board of Water and Air Resources, identifying the land sought to be condemned and stating the purposes for which said land is needed; and

(2) The Board of Water and Air Resources finds that the land is sought to be acquired for a proper purpose within the intent of chapter 143, article 21, part 4. The findings of the Board of Water and Air Resources

will be conclusive in the absence of fraud, notwithstanding any other provision of law.

(c) The Board of Water and Air Resources shall certify copies of its findings to the applicant municipality, county, or other local unit, and to the clerk of superior court of the county or counties wherein any of the land sought to be condemned lies for recordation in the special proceedings thereof.

(d) For purposes of this section:

(1) The term "interest in land" means any land, right-of-way, rights of access, privilege, easement, or other interest in or relating to land. Said "interest in land" does not include an interest in land which is held or used in whole or in part for a public water supply, unless such "interest in land" is not necessary or essential for such uses or purposes.

(2) A "description" of land shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the applicant, boundaries may be described by any of the following methods or by any combination thereof: by reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land.

(e) The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in General Statutes chapter 40, article 2, and all acts amendatory thereof.

(f) Interests in land acquired pursuant to this section may be used in such manner and for such purposes as the local governing body deems best. If, in the opinion of the local governing body, such lands should be sold, leased or rented, this may be done, subject to the approval of the Board of Water and Air Resources.

(g) This section is intended to confer supplementary and additional authority, and not to confer exclusive authority nor to impose cumulative requirements. If a municipality, county or other local government unit is authorized to acquire lands or interests in lands by some other law (such as by General Statutes chapter 139, 153, 160, or 162A) as well as by this section, compliance with the requirements of this section or the requirements of such other law will be sufficient.

(h) This section shall not authorize acquisition by condemnation of interests in land within the boundaries of any project to be constructed by the Tennessee Valley Authority, its agents or subdivision or any project licensed by the Federal Power Commission or interests in land owned or held for use by a public utility, as defined in G.S. 62-3. No commission created pursuant to G.S. 158-8 shall condemn or acquire any property to be used by the Tennessee Valley Authority, its agents or subdivision. (1969, cc. 724, 968.)

§ **143-215.43. Additional powers.**—For the purpose of complying with requirements of local cooperation as described in this part, county and municipal governing bodies shall also have the power to accept funds, and to use general tax funds for necessary project purposes, including project maintenance. (1969, cc. 724, 968.)

Part 5. Right of Withdrawal of Impounded Water.

§ **143-215.44. Right of withdrawal.**—(a) A person who lawfully impounds water for the purpose of withdrawal shall have a right of withdrawal of excess volume of water attributable to the impoundment. Within the meaning of this subsection, the word "purpose" shall include one of several purposes in a multiple purpose impoundment.

(b) A "right of withdrawal," within the meaning of this Part, is an interest which establishes a right to withdraw an excess volume of water superior to other interests in the water.

(c) "Excess volume of water," within the meaning of this Part, is that volume which may be withdrawn from an impoundment or from a watercourse below the impoundment without foreseeably reducing the rate of flow of a watercourse below that which would obtain in that watercourse if the impoundment did not exist.

(d) "Impound," within the meaning of this Part, shall include but is not limited to financial contributions or the assurance of financial contributions in the construction or operation of an impoundment.

(e) A "person," within the meaning of this Part, is any and all persons, including (but not limited to) individuals, firms, partnerships, associations, public or private institutions, municipalities or counties or local government units (as defined in G.S. 143-215.40(b)), governmental agencies, or private or public corporations organized under the laws of this State or any other state or country. (1971, c. 111, s. 1.)

Editor's Note. — Session Laws 1971, c. 111, s. 3, provides: "All laws and clauses of laws in conflict with this act are hereby repealed."

§ **143-215.45. Transfer of right of withdrawal.**—A person with a right of withdrawal may assign or transfer it in whole or in part to another, subject to those rights of reassignment or transfer by the State specified in G.S. 143-354(11). A person who has a right of withdrawal of excess volume of water by virtue of an assignment or transfer has an interest in water superior to other interests only to the extent that his withdrawal is in accordance with the terms of the assignment or transfer. (1971, c. 111, s. 1.)

§ **143-215.46. Exercise of right of withdrawal.**—A person may exercise his right of withdrawal by withdrawing directly from the impoundment, from a watercourse below the impoundment, or from both; provided, however, that the exercise of the right of withdrawal shall not require any person other than the holder of said right to incur additional capital expenditures in order to enable the holder of said right to withdraw any excess volume of water from a watercourse below the impoundment. (1971, c. 111, s. 1.)

§ **143-215.47. Effect of right of withdrawal on discharges of water.**—Neither a right of withdrawal nor any assignment or transfer of said right may be asserted in defense against a claim that the method of releasing or discharging water is improper, that the quality of water has been impaired by the withdrawal or release of the water or by its return to the stream following its use, that water has been diverted without authority from the basin from which it was withdrawn, or that water resulting from augmentation of the natural streamflow to control water quality has been withdrawn. (1971, c. 111, s. 1.)

§ **143-215.48. Determining streamflows.**—(a) In litigation in which the rate of flow of water that would exist in the absence of an impoundment is in issue, that rate shall be deemed to be the minimum average flow for a period of seven consecutive days that have an average recurrence of once in 10 years unless a party to the litigation introduces a calculation that more closely approximates the actual rate. A determination made by the Board of Water and Air Resources (i) of either that minimum average flow, or (ii) that adopts a calculation that more closely approximates the actual rate of flow, and introduced by one of the parties to the ligitation, shall be prima facie correct.

(b) The Board of Water and Air Resources is authorized to make the determinations specified in subsection (a) of this section and to require the submission of such reports and make such inspections as are necessary to permit those determinations. (1971, c. 111, s. 1.)

§ **143-215.49. Right of withdrawal for use in community water supply.**—A person operating a municipal, county, community or other local water distribution or supply system and having a right of withdrawal may assert that right when its withdrawal is for use in any such water system as well as in other circumstances. (1971, c. 111, s. 1.)

§ **143-215.50. Interpretation with other statutes.**—Whether rights of withdrawal shall have effect in a capacity use area declared by the Board of Water and Air Resources under the Water Use Act of 1967 shall be in the discretion of the Board. This Part shall be subject to the provisions of the Water and Air Resources Act, and the Dam Safety Law of 1967. (1971, c. 111, s. 1.)

Part 6. Floodway Regulation.

§ **143-215.51. Preamble.**—The purpose of this Part is to specify a means for regulation of artificial obstructions in floodways by responsible local governments with guidance, coordination and assistance from State government, consonant with the State policy of vesting primary responsibility for flood plain management with local levels of government. It is hereby declared that the channel and a portion of the flood plain of all of the State's streams will be designated as a floodway, in which artificial obstructions may not be placed except with the permission of the responsible local government. The purpose of designating these areas as a floodway is to help control and minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage, and thereby to prevent or minimize loss of life, injuries, property damage and other losses (both public and private) in flood hazard areas, and to promote the public health, safety and welfare of citizens of North Carolina in flood hazard areas. (1971, c. 1167, s. 3.)

Editor's Note. — Session Laws 1971, c. 1167, s. 12, makes the act effective July 1, 1971.

Session Laws 1971, c. 1167, s. 11, contains a severability clause.

§ **143-215.52. Definitions.**—As used in this Part, unless the context otherwise requires:

(1) "Artificial obstruction" means any obstruction which is not a natural obstruction, including any which, while not a significant obstruction in itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the stream.

(2) "Floodway" means that portion of the channel and flood plain of a stream designated to provide passage for the 100-year flood, without increasing the elevation of that flood at any point by more than one foot.

(3) "Local government" means any county or municipal corporation.

(4) "Natural obstruction" includes any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause.

(5) "Stream" means a water course that collects surface runoff from an area of one square mile or greater. This does not include flooding due to tidal or storm surge on estuarine or ocean waters. (1971, c. 1167, s. 3.)

§ **143-215.53. Artificial obstruction prohibited.**—The placement of any artificial obstruction in the floodway of any stream after the floodway has been delineated pursuant to G.S. 143-215.56 is hereby prohibited, except as set forth in G.S. 143-215.54, unless a permit has been obtained for such artificial obstruction from the responsible local government. No damageable portion of a structure located outside the floodway may be below the elevation that would be attained by the 100-year flood if the stream were contained within the floodway. (1971, c. 1167, s. 3.)

§ 143-215.54. Floodway uses.—(a) Local governments are empowered to grant permits for the use of the floodways consistent with the purposes of this Part.

(b) The following uses may be made of floodways as a matter of right without a permit issued under this Part:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.

(2) Loading areas, parking areas, rotary aircraft ports, and other similar industrial-commercial uses.

(3) Lawns, gardens, parking, play areas, and other similar uses.

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, swimming pools, hiking or horseback-riding trails, open space and other similar private and public recreational uses.

(5) Streets, bridges, overhead utility lines, creek and storm drainage facilities, sewage or waste treatment plant outlets, water supply intake structures, and other similar public, community or utility uses.

(6) Temporary facilities (for a specified number of days), such as displays, circuses, carnivals, or similar transient amusement enterprises.

(7) Boat docks, ramps, piers, or similar structures.

(8) Dams. (1971, c. 1167, s. 3.)

§ 143-215.55. Existing artificial obstructions.—Artificial obstructions existing in a floodway on July 1, 1971 shall not be considered to be in violation of this Part. However, they may not be enlarged or replaced in part or in whole, without a permit, as provided by this Part in the case of a proposed artificial obstruction. Local governments are empowered to acquire, by purchase, exchange, or condemnation such existing artificial obstructions if deemed necessary by the responsible local government for the purpose of avoiding flood damages. The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in G.S. Chapter 40, Article 2, and all acts amendatory thereof. (1971, c. 1167, s. 3.)

§ 143-215.56. Delineation of floodway; powers of Board of Water and Air Resources; powers of local governments.—(a) For the purpose of delineating the floodway and evaluating the possibility of flood damages, responsible local governments are empowered to:

(1) Request technical assistance from the competent federal agencies, including the Army Corps of Engineers, the Soil Conservation Service, the Tennessee Valley Authority, and the U.S. Geological Survey, or successor agencies, and

(2) Utilize the reports and data supplied by federal and State agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) The Board of Water and Air Resources shall be empowered to render advice and assistance to any local government having responsibilities under this Part. In exercising this function it shall specifically be authorized to furnish manuals, suggested standards, plans, and other technical data; to conduct training programs; and to give advice and assistance with respect to handling of particular applications; but it shall not be limited to such activities. In the exercise of its powers to adopt rules and regulations interpreting and applying the provisions of this Part, the Board may adopt (but is not limited to adopting) regulations interpreting any of the terms used in this Part, including regulations supplementing the definitions provided in this Part. A copy of every regulation adopted by the Board interpreting or applying the provisions of this Part, shall be filed by the Board with the chairman of the governing body of each county and municipality within the State, as well as with the Secretary of State as required by G.S. 143-195.

(c) The local governing body may delineate any floodway subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies and with the Director of Water and Air Resources. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of such map or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. The local governing body may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which it is designated to replace upon the filing thereof at those places designated above. (1971, c. 1167, s. 3.)

§ **143-215.57. Procedures in issuing permits.**—(a) Responsible local governments are empowered to establish application forms and require such maps, plans, and other information as necessary for the issuance of permits in a manner consonant with the objectives of this Part. They shall consider the effects of a proposed artificial obstruction in a floodway in creating danger to life and property

(1) By water which may be backed up or diverted by such obstruction;
(2) By the danger that the obstruction will be swept downstream to the injury of others; and
(3) By the injury or damage at the site of the obstruction itself.

For this purpose they may take into account anticipated development in the foreseeable future which may be adversely affected by the obstruction, as well as existing development.

(b) In prescribing standards and requirements for the issuance of permits under this Part, and in issuing such permits, responsible local governments shall proceed as in the case of an ordinance for the better government of the county or municipality, as the case may be. A municipality may exercise the powers granted in this Part not only within its corporate boundaries but also within the area of its extra-territorial zoning jurisdiction. A county may exercise the powers granted in this Part at any place within the county outside the zoning jurisdiction of any municipalities in the county. The county may regulate territory within the zoning jurisdiction of any municipality whose governing body, by resolution, agrees to such regulation; provided, however, that any such municipal governing body may, upon one year's written notice, withdraw its approval of the county regulations, and those regulations shall have no further effect within the municipality's jurisdiction.

(c) The local governing body is hereby empowered to adopt such regulations as it may deem necessary concerning the form, time, and manner of submission of applications for permits under this Part. Such regulations may provide for the issuance of permits under this Part by the local governing body or by such agency as may be designated by said body, as prescribed by the governing body. Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of any such appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Part. (1971, c. 1167, s. 3.)

§ 143-215.58. Violations and penalties. — (a) Any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part shall constitute a misdemeanor.

(b) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Part or any ordinance adopted (or the provision of any permit issued) under the authority of this Part, shall constitute a separate violation of this Part for each 10 days that such failure continues after written notice from the county or municipal governing body.

(c) In addition to or in lieu of other remedies, the county or municipal governing body may institute any appropriate action or proceeding to restrain or prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part, or to require any person, firm or corporation which has committed any such violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction. (1971, c. 1167, s. 3.)

§ 143-215.59. Other approvals required.—(a) The granting of a permit under the provisions of this Part shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.

(b) No permit for the construction of any structure to be located within a floodway shall be granted by a political subdivision unless the applicant has first obtained the permit required by this Part. (1971, c. 1167, s. 3.)

§ 143-215.60. Liability for damages.—No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this Part shall be brought against the State or any political subdivision of the State, or their employees or agents. (1971, c. 1167, s. 3.)

§ 143-215.61. Flood plain management.—The provisions of this Part shall not preclude the imposition by responsible local governments of land use controls and other regulations in the interest of flood plain management for the flood plain or the floodway. (1971, c. 1167, s. 3.)

Part 6A. Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund.

§ 143-215.62. Revolving fund established; conditions and procedures.—(a) There is established under the control and direction of the North Carolina Board of Water and Air Resources, a Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund, to consist of any moneys that may be appropriated for use through the Fund by the General Assembly or that may be made available to it from any other source for the purpose of financing the local portion of the nonfederal share of the cost of hurricane flood protection and beach erosion control projects. The Board shall, when funds are available, and in accordance with priorities established by the Board, make advances from the Fund to any county or municipality for:

(1) Advance planning and engineering work necessary or desirable in order to promote the development, construction, or preservation of hurricane flood protection and beach erosion works or projects;

(2) Construction of hurricane flood protection and beach erosion control works or projects, or other related costs which are a responsibility of local government, including costs associated with construction, such as the acquisition of land or rights-of-way or the relocation of public roads and utilities;

(3) Maintenance and nourishment of the constructed works or project.

Such advances shall be subject to repayment by the recipient to the Board from the proceeds of bonds or other obligations for the beach erosion control and hurricane flood protection works or projects, or from other funds available to the recipient, including grants.

(b) Prior to making any advance to a county or municipal government the Board shall advise the county or municipal government:

(1) Its opinion as to whether or not the projected works or project would further beach erosion control or provide protection to life or property from flood waters resulting from hurricanes;

(2) Its opinion as to whether or not there is a reasonable prospect of federal aid in the financing of the projected works or project and whether or not the advance will exceed the local portion of the nonfederal share of the cost of the works or project to be financed by the county or municipality making the application;

(3) Its opinion as to whether or not the anticipated financial outlays in connection with the projected works or project for the county or municipality making the application would constitute an unreasonable burden on the citizens of the county or municipality.

The Board shall make no advance to a county or municipal government without first receiving satisfactory assurances from such government that the projected works or project shall be undertaken and the funds advanced repaid as provided herein.

(c) Repayment of any advance may be in equal installments or in a lump sum, but the term for such repayment shall not exceed a term of 10 years. All moneys received from repayments on advances shall be paid into the Revolving Fund and shall be used for the purposes set forth in this section.

(d) The Board may adopt such rules and regulations with respect to making application as are consistent with the terms and purposes of this section. (1971, c. 1159, s. 1.)

Part 7. Water and Air Quality Reporting.

§ **143-215.63. Short title.**—This Part shall be known and may be cited as the Water and Air Quality Reporting Act of 1971. (1971, c. 1167, s. 9.)

Editor's Note. — Session Laws 1971, c. 1167, s. 12, makes the act effective July 1, 1971.

Session Laws 1971, c. 1167, s. 11, contains a severability clause.

§ **143-215.64. Purpose.**—The purpose of this Part is to require all persons who are subject to the provisions of G.S. 143-215.1 to file reports with the Board of Water and Air Resources covering the discharge of waste and air contaminants to the waters and outdoor atmosphere of the State and to establish and maintain approved systems for monitoring the quantity and quality of such discharges and their effects upon the water and air resources of the State. (1971, c. 1167, s. 9.)

§ **143-215.65. Reports required.**—All persons subject to the provisions of G.S. 143-215.1 who discharge wastes to the waters or emit air contaminants to the outdoor atmosphere of this State shall file monthly reports with the Board setting forth the volume and characteristics of wastes discharged or air contaminants emitted daily or such other period of time as may be specified by the Board in its official regulations. Such reports shall be filed on forms either provided by or approved by the Board and shall include such pertinent data with reference to the total and average volume of wastes or air contaminants discharged, the strength and amount of each waste substance or air contaminant discharged, the type and degree of treatment such wastes or air contaminants received prior to discharge and such other information as may be specified by the Board in its official regulations. The information shall be used by the Board only for the purpose of air and water pollution control. The Board shall provide proper and adequate facilities and procedures to safeguard the confidentiality of proprietary manufacturing processes except that confidentiality shall not extend to wastes discharged or air contaminants emitted. (1971, c. 1167, s. 9.)

§ **143-215.66. Monitoring required.**—In order to provide for adequately monitoring the discharge of wastes to the waters and the emission of contaminants to the outdoor atmosphere and their effects upon the quality of the environment, all persons subject to the provisions of G.S. 143-215.1 who cause such discharges or emissions shall establish and maintain adequate water and air quality monitoring systems and report the data obtained therefrom to the Board. Each monitoring system shall include the collection of water or air quality data as appropriate from such locations, in such detail, and with such frequency as shall be reasonably required by the Board, in its official regulations, for evaluating the efficiency of treatment facilities or air cleaning devices and the effects of the discharges or emissions upon the waters and air resources of the State. (1971, c. 1167, s. 9.)

§ **143-215.67. Acceptance of wastes to disposal systems and air cleaning devices.**—No person subject to the provisions of G.S. 143-215.1 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste disposal system or air cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the disposal system or cleaning device cannot adequately treat. (1971, c. 1167, s. 9.)

§ **143-215.68. Rules and regulations.**—The Board is hereby specifically authorized to adopt appropriate report forms and such rules and regulations as deemed necessary for the implementation of this Part. (1971, c. 1167, s. 9.)

§ **143-215.69. Penalties.**—Any person who violates any provisions of this Part or any regulations adopted by the Board for its implementation shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00), nor more than one thousand dollars ($1,000) for each violation and each day such person shall fail to comply after having been officially notified by the Board shall constitute a separate offense subject to the foregoing penalty. (1971, c. 1167, s. 9.)

ARTICLE 22.

State Ports Authority.

§ 143-216. Creation of Authority; membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

State Government Reorganization.—The State Ports Authority was transferred to the Department of Transportation and Highway Safety by § 143A-107, enacted by Session Laws 1971, c. 864.

§ 143-218. Powers of Authority.

Ports Authority Has Power to Lease Property to Private Investor.—See opinion of Attorney General to Mr. Woodrow Price, Chairman, State Ports Authority, 10/1/70.

§ 143-218.1. Approval of acquisition and disposition of real property.

The North Carolina State Ports Authority is not freed from the provisions of this section merely because the Authority has the right under § 143-220 to select the particular procedure it will follow in exercising its power of eminent domain. North Carolina State Ports Authority v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

Quoted in State Highway Comm'n v. Matthis, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

State Ports Authority.

§ 143-219. Issuance of bonds.

Editor's Note.—Section 13 of the State Ports Bond Act of 1949, Session Laws 1949, c. 820, s. 13, was repealed by Session Laws 1971, c. 574.

§ 143-220. Power of eminent domain.

Strict Construction.—The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. North Carolina State Ports Authority v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

The right to authorize the exercise of the power of eminent domain and the mode of exercise thereof is wholly legislative, limited only by constitutional provisions which require reasonable notice and opportunity to be heard and payment of just compensation for taking of private property for public uses. North Carolina State Ports Authority v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

The North Carolina State Ports Authority is not freed from the provisions of § 143-218.1 merely because the Authority has the right under this section to select the particular procedure it will follow in exercising its power of eminent domain. North Carolina State Ports Authority v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

§ 143-221. Exchange of property; removal of buildings, etc.—The Authority may exchange any property or properties acquired under the authority of this chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, railroads, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this article. (1945, c. 1097, s. 6.)

Editor's Note.—This section is set out in the Supplement to correct an error appearing in the replacement volume.

§ 143-224. Jurisdiction of the Authority; application of chapter 20; appointment and authority of special police.—(a) The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend to all properties owned by or under control of the Authority and shall also extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports.

(b) All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the properties owned by or under the control of the North Carolina State Ports Authority. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the properties of said Authority as is now vested by law in the said Authority.

(c) The North Carolina State Ports Authority is hereby authorized to make such reasonable rules, regulations, and adopt such additional ordinances with respect to the use of the streets, alleys, driveways and to the establishment of parking areas on the properties of the Authority and relating to the safety and welfare of persons using the property of the Authority. All rules, regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Authority and printed and copy of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of

North Carolina and the Authority shall cause to be posted, at appropriate places on the properties of the Authority, notice to the public of applicable rules, regulations and ordinances as may be adopted under the authority of this subsection. Any person violating any such rules, regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not exceeding fifty dollars ($50.00) or imprisonment not to exceed thirty days.

(d) The Executive Director of the Authority is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have all the powers of policemen of incorporated towns. Such policemen shall have the power of arrest of persons committing violations of State law or any reasonable rules, regulations and ordinances lawfully adopted by the Authority as herein authorized. Employees appointed as such special policemen shall take the general oath of office prescribed by General Statutes 11-11. (1945, c. 1097, s. 9; 1959, c. 523, s. 7; 1965, c. 1074.)

Editor's Note.—
The 1965 amendment rewrote this section.

ARTICLE 23.

Armory Commission.

§ 143-230. Composition of Commission.

State Government Reorganization.—The Armory Commission was transferred to the Department of Military and Veterans' Affairs by § 143A-237, enacted by Session Laws 1971, c. 864.

ARTICLE 23A.

Stadium Authority.

§§ 143-236.2 to 143-236.28: Repealed by Session Laws 1971, c. 882, s. 2, effective July 1, 1971.

ARTICLE 24.

Wildlife Resources Commission.

§ 143-237. Title.

State Government Reorganization.—The Wildlife Resources Commission was transferred to the Department of Natural and Economic Resources by § 143A-118, enacted by Session Laws 1971, c. 864.

§ 143-238. Definitions.

(3) The terms "wildlife resources" and "wildlife" shall be defined in accordance with the definitions in § 113-129. (1947, c. 263, s. 2; 1965, c. 957, s. 12.)

Editor's Note. — The 1965 amendment rewrote subdivision (3). As to the effective date of the act, see Editor's note to § 113-127.

As the rest of the section was not affected by the amendment, it is not set out.

§ 143-239. Statement of purpose.—The purpose of this article is to create a separate State agency to be known as the North Carolina Wildlife Resources Commission, the function, purpose, and duty of which shall be to manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina, and to administer the laws relating to game, game and fresh-water fishes, and other wildlife resources enacted by the General Assembly to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical game, game fish, and wildlife program directed by qualified, competent, and representative citizens, who shall have knowledge of or training in the protection, restoration, proper use and management of wildlife resources. (1947, c. 263, s. 3; 1965, c. 957, s. 13.)

Editor's Note. — The 1965 amendment substituted "and other wildlife resources" for 'and other wildlife exclusive of commercial fisheries" near the middle of the section. As to the effective date of the act, see Editor's note to § 113-127.

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members. — There is hereby created a Commission to be known as the North Carolina Wildlife Resources Commission. The Commission shall consist of nine citizens of North Carolina, who shall be competent and qualified as herein provided, and who shall be appointed by the Governor. One and only one of the Commission members shall be appointed from each of the following geographical districts:

First district to be composed of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties: Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties: Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties; Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties: Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties: Anson, Cabarrus, Davidson, Mecklenburg, Montgomery, Moore, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties: Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties: Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems. (1947, c. 263, s. 4; 1961, c. 737, s. 1½; 1965, c. 859, s. 2; 1971, c. 285.)

Editor's Note.—

The 1965 amendment repealed the 1961 amendment, and reinstated the section as it appeared prior to that amendment.

The 1971 amendment added "New Hanover" to the second district and deleted "New Hanover" in the fourth district.

§ 143-241. Appointment and terms of office of Commission members.—The terms of office of the members of the North Carolina Wildlife Resources Commission who are now serving as members from the State at large shall expire June 30, 1965. The terms of the remaining nine incumbent members of said Commission shall not expire until the end of the terms for which they were appointed.

On the first day of July 1965 and thereafter, the Governor shall appoint members of the North Carolina Wildlife Resources Commission from the several geographical districts set forth in G.S. 143-240 as follows:

On July 1, 1965, one from each of districts two, five and eight to serve six years each;

On July 1, 1967, one member from each of districts three, six and nine, to serve terms of six years each;

On July 1, 1969, one member from each of districts one, four and seven, to serve terms of six years each.

Thereafter as the terms of office of the members of the Commission from the several districts expire, their successors shall be appointed for terms of six years each.

All members appointed pursuant to this section shall serve until their successors are appointed and qualified. Any member of the Commission appointed pursuant to this section may be removed by the Governor for cause. (1947, c. 263, s. 5; 1961, c. 737, s. 1; 1965, c. 859, s. 3.)

Editor's Note.—

The 1965 amendment repealed the 1961 amendment and rewrote this section.

§ **143-245. Compensation of commissioners.**—The members of the Commission shall receive the amount of per diem provided by G.S. 138-5 and actual travel expenses while in attendance of meetings of the Commission or engaged in the business of the Commission; all travel expenses shall be paid in accordance with the provisions of the Executive Budget Act, article 1, chapter 143 of the General Statutes of North Carolina. (1947, c. 263, s. 9; 1969, c. 445, s. 5.)

Editor's Note. — The 1969 amendment substituted "the amount of per diem provided by G.S. 138-5" for "not more than ten dollars ($10.00) per diem."

§ **143-246. Executive Director; appointment, qualifications, duties, oath of office, and bonds.**—The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission, and said Director shall be allowed actual expenses incurred while on official duties away from resident headquarters; said salary and expenses to be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Before entering upon the duties of his office, the Executive Director shall take the oath of office as prescribed for public officials and shall execute and deposit with the State Treasurer a bond in the sum of ten thousand dollars ($10,000.00), to be approved by the State Treasurer, said bond to be conditioned upon the faithful performance of his duties of office. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. The said Executive Director shall be clothed and vested with all powers, duties, and responsibilities heretofore exercised by the Commission of Game and Inland Fisheries relating to wildlife resources. (1947, c. 263, s. 10; 1957, c. 541, s. 17; 1969, c. 844, s. 5.)

Editor's Note.—

The 1969 amendment added the next-to-last sentence.

§ **143-247. Transfer of powers, duties, jurisdiction, and responsibilities.**—All duties, powers, jurisdiction, and responsibilities now vested by statute in and heretofore exercised by the Department of Conservation and Development, the Board of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, the Commissioner of Game and Inland Fisheries, or any predecessor organization, board, commission, commissioner or official relating to or pertaining to the wildlife resources of North Carolina, subject to the provisions of subchapter IV of chapter 113 of the General Statutes, are hereby transferred to and vested by law in the North Carolina Wildlife Resources Commission hereby created, subject to the provisions of this article. The powers, duties, jurisdiction, and responsibilities hereby transferred shall be vested in the Commission immediately upon its organization under the provisions of this article. Provided however, that no provision of this article shall be construed as transferring to or conferring upon the North Carolina Wildlife Resources Commission, herein created, jurisdiction over the administration of any laws regulating the pollution of streams or public waters in North Carolina. (1947, c. 263, s. 11; 1965, c. 957, s. 14.)

Editor's Note. — The 1965 amendment substituted "subject to the provisions of subchapter IV of chapter 113 of the General Statutes" for "exclusive of commercial fish and fisheries" near the end of the first sentence. As to the effective date of the act, see Editor's note to § 113-127.

§ **143-247.1. Commission may accept gifts.**—The Wildlife Resources Commission is hereby authorized and empowered to accept gifts, donations or contributions from any source, which funds shall be held in a separate account and used solely for the purposes of wildlife conservation and management. Such funds shall be administered by the Wildlife Resources Commission and shall be used for wildlife conservation and management in a manner consistent with wildlife conservation management principles. (1971, c. 388.)

§ **143-248. Transfer of lands, buildings, records, equipment, and other properties.**—There is hereby transferred to the North Carolina Wildlife Resources Commission all lands, buildings, structures, records, reports, equipment, vehicles, supplies, materials, and other properties, and the possession and use thereof, which have heretofore been acquired or obtained and now remain in the possession of, or which are now and heretofore have been used or intended for use by the Department of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, and the Commission of Game and Inland Fisheries, and any predecessor organization or division or official of either, for the purpose of protecting, propagating, and developing game, fur-bearing animals, game fish, inland fisheries, and all other wildlife resources which heretofore have been used or held by them in connection with any program conducted for said purposes, whether said lands or properties were acquired, purchased, or obtained by deed, gift grant, contract, or otherwise; the said lands and other properties hereby transferred, subject to the limitations hereinafter set forth to the said Wildlife Resources Commission shall be held and used by it subject to the provisions of this article and other provisions of law in furtherance of the intents, purposes, and provisions of this article and other provisions of law in such manner and for such purposes as may be determined by the Commission. In the event that there shall arise any conflict in the transfer of any properties or functions as herein provided, the Governor of the State is hereby authorized and empowered to issue such executive order, or orders, as may be necessary clarifying and making certain the issue, or issues, thus arising: Provided, further, nothing herein contained shall be construed to transfer any of the State parks or State forests to the North Carolina Wildlife Resources Commission: Provided, further, title to the property transferred by virtue of the provisions of this article shall be held by the State of North Carolina for the use and benefit of the North Carolina Wildlife Resources Commission and the use, control and sale of any of such property shall be governed by the general law of the State affecting such matters. (1947, c. 263, s. 12; 1965, c. 957, s. 15.)

Editor's Note. — The 1965 amendment deleted "exclusive of commercial fish or fisheries" following "wildlife resources" near the middle of the first sentence. As to the effective date of the act, see Editor's note to § 113-127.

§ 143-250. Wildlife Resources Fund.—All monies in the game and fish fund or any similar State fund when this article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such monies in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources shall also be transferred to the Wildlife Resources Fund.

On and after July 1, 1947, all monies derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this article. The Wildlife Resources Fund herein created shall be subject to the provisions of the Executive Budget Act, chapter 143, article 1 of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, chapter 143, article 2 of the General Statutes of North Carolina as amended.

All monies credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this article.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned. (1947, c. 263, s. 14; 1965, c. 957, s. 16.)

Editor's Note. — The 1965 amendment deleted "exclusive of commercial fish and fisheries" following "resources" in the second paragraph. As to the effective date of the act, see Editor's note to § 113-127.

§ 143-252. Article subject to chapter 113. — Nothing in this article shall be construed to affect the jurisdictional division between the North Carolina Wildlife Resources Commission and the Department of Conservation and Development contained in subchapter IV of chapter 113 of the General Statutes, or in any way to alter or abridge the powers and duties of the two agencies conferred in that subchapter. (1947, c. 263, s. 16; 1965, c. 957, s. 17.)

Editor's Note. — The 1965 amendment rewrote this section. As to the effective date of the act, see Editor's note to § 113-127.

ARTICLE 25.

National Park, Parkway and Forests Development Commission.

§ 143-255. Commission created; members appointed.

State Government Reorganization.—The Development Commission was transferred to the Department of Natural and Economic Resources by § 143A-116, enacted by Session Laws 1971, c. 864.

ARTICLE 29A.

Governor's Committee on Employment of the Handicapped.

§ 143-283.4. Governor's Committee; how constituted.

State Government Reorganization.—The Governor's Committee on Employment of the Handicapped was transferred to the Department of Human Resources by § 143A-161, enacted by Session Laws 1971, c. 864.

§ 143-283.9. Executive Committee a governmental agency; oaths of members; compensation; bonds.—The Executive Committee is hereby constituted an agency of the State of North Carolina and the exercise by the Executive Committee of the power and duties conferred by this Article shall be deemed to be an exercise of the governmental functions of the State. Members of the Executive Committee shall execute the oath or oaths of offices prescribed by the Constitution and statutes of the State of North Carolina. Members of the Executive Committee shall receive the same per diem allowance, and shall be reimbursed for actual travel and subsistence expense, in the same manner and amount as members of other State boards, commissions, and committees.

Bond premiums for any bond which may be required shall be paid by the Executive Committee from its revolving fund. (1961, c. 981; 1971, c. 920.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote the last sentence in the first paragraph.

ARTICLE 29B.

Governor's Coordinating Council on Aging.

§ 143-283.11. Council created; ex officio and nongovernment members; chairman. — There is hereby created in the Department of Administration, hereafter called the Department, the North Carolina Governor's Coordinating Council on Aging, hereafter called the Council. The Council shall consist of the State Director of Administration; the State Commissioner of Public Welfare; the State Health Director; the State Commissioner of Mental Health; the State Librarian of the State Library; the Executive Director of the North Carolina Department of Local Affairs; the chairman of the Employment Security Commission; the executive secretary of the Teachers' and State Employees' Retirement System; the Commissioner of the Department of Labor; the State Superintendent of Public Instruction; the Supervisor of Services to the Aging, State Board of Public Welfare; the Director of the School of Public Health of the University of North Carolina; the Director of the Agricultural Extension Services of North Carolina State University at Raleigh; all serving as ex officio and herein referred to as government members; a representative of the Medical Society of the State of North Carolina to be appointed by the president of the society; and seven citizens of the State of North Carolina, herein referred to as citizen members, who have an interest and knowledge of the problems of the aging. The Governor of North Carolina shall appoint the seven citizen members.

The chairman shall be appointed by the Governor. (1965, c. 977, s. 1; 1969, c. 1145, s. 1.)

Editor's Note. — Section 15 of the act from which this article was codified makes it effective July 1, 1965.

The 1969 amendment, effective July 1, 1969, substituted "Executive Director of the North Carolina Department of Local Affairs" for "Executive Director of the Recreation Commission."

By virtue of Session Laws 1969, c. 982, "State Commissioner of Public Welfare" shall be construed to mean "State Commissioner of Social Services," and "State Board of Public Welfare" shall be construed to mean "State Board of Social Services."

State Government Reorganization.—The Governor's Coordinating Council on Aging was transferred to the Department of Human Resources by § 143A-158, enacted by Session Laws 1971, c. 864.

§ **143-283.12. Terms of nongovernment members; vacancies.** — The citizen members and the Medical Society member of the Council shall be appointed for terms of four years each, commencing July 1, 1965, except that of the citizen members first appointed one shall be for a term of one year, two for terms of two years, two for terms of three years and two for terms of four years. Vacancies shall be filled for the remainder of any unexpired terms in the same manner as the original appointment. (1965, c. 977, s. 2.)

§ **143-283.13. Quorum; meetings; attendance by deputies.** — A majority of the members of the Council shall constitute a quorum for the purpose of transacting business. The Council shall meet quarterly and more often if necessary on the call of the chairman. If unable to attend a Council meeting, a government member shall send in his place his deputy or another person with authority to act in his behalf, and who shall, then, be allowed full Council status and shall be considered a member of the Council for the purpose of obtaining a quorum and for all other Council purposes. (1965, c. 977, s. 3.)

§ **143-283.14. Reimbursement for expenses.** — All non-government members shall be entitled to reimbursement for authorized expenses incurred in the work of the Council, as provided for members of boards and commissions under the general laws of the State. (1965, c. 977, s. 4.)

§ **143-283.15. Council placed in Department of Administration.**— The Council is placed within the Department of Administration for administrative purposes. (1965, c. 977, s. 5.)

§ **143-283.16. Executive Director.**—The Council shall appoint in accordance with the State personnel plan an Executive Director who shall be a person professionally qualified by experience and training to assume the responsibilities of the position and to serve at the will of the Council. (1965, c. 977, s. 6.)

§ **143-283.17. Staff and consultants.** — The Executive Director of the Council shall select and appoint in accordance with the State personnel plan such other personnel as the Council determines to be necessary. The Executive Director of the Council shall employ, on a contractual basis, such other consultants and/or staff persons as he deems necessary, within funds allocated for such purpose, upon the approval of the Council. (1965, c. 977, s. 7.)

§ **143-283.18. Advisory subcommittees.**—The Council is authorized to establish and disestablish such advisory subcommittees as it considers advisable and useful, and to appoint, with their concurrence, such government and citizen members to the subcommittees as it considers necessary and appropriate, provided that members of said advisory subcommittees shall serve without compensation but may be reimbursed for authorized travel expenses. (1965, c. 977, s. 8.)

§ **143-283.19. General duties of Council.**—The Council, through its Executive Director, staff, its members and subcommittees shall take action to carry out the following purposes:

(1) Maintain a continuing review of existing programs for the aging in the State of North Carolina, and periodically make recommendations to the Governor and the General Assembly for improvements in and additions to such programs;

(2) Study, collect, maintain, publish, and otherwise disseminate factual data and pertinent information relative to all aspects of aging. These include the societal, economic, education, recreation, and health needs and opportunities of the aging;

(3) Stimulate, inform, educate and assist local organizations, the community at large, and older people themselves about aging, about needs, resources and opportunities for the aging, and about the part they can play in improving conditions for the aging;

(4) Serve as the agency through which various public and nonpublic organizations concerned with the aged can exchange information, coordinate programs, and be helped to engage in joint endeavors;

(5) Provide consultation and information to North Carolina State government departments and agencies and to nongovernmental organizations which may be considering the inauguration of services, programs, or facilities for the aging, or which can be stimulated to take such action;

(6) Encourage and assist governmental and private agencies to coordinate their efforts on behalf of the aging in order that such efforts be effective and that duplication and wasted effort be prevented or eliminated;

(7) Promote employment opportunities as well as proper and adequate recreation use of leisure for older people, including opportunities for uncompensated but satisfying volunteer work;

(8) Identify research needs, encourage research, and assist in obtaining funds for research and demonstration projects. (1965, c. 977, s. 9.)

§ **143-283.20. Establishment of demonstration programs.** — The Council may establish or help to establish demonstration programs of services for the aging. (1965, c. 977, s. 10.)

§ **143-283.21. State agency to handle federal aging programs.**—The Council shall constitute the State agency for handling all programs of the federal government relating to the aging requiring action within the State which are not the specific responsibility of another State agency under the provisions of federal law or which have not been specifically entrusted to another State agency by the legislature. (1965, c. 977, s. 11.)

§ **143-283.22. Biennial reports.**—The Council shall, in addition to such other recommendations, studies and plans as it may submit from time to time, submit a biennial report of progress to the Governor and, thus, to the General Assembly. (1965, c. 977, s. 12.)

§ **143-283.23. Acceptance of gifts, matching funds, etc.** — In addition to the appropriations out of the general fund of the State, the Council may accept gifts, bequests, devises, matching funds or other considerations for use in promoting the work of the Council. (1965, c. 977, s. 13; 1967, c. 24, s. 17.)

Editor's Note. — The 1967 amendment, originally effective Oct. 1, 1967, substituted "devises" for "devices."

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

ARTICLE 29C.

Youth Councils Act.

§ **143-283.24. Short title.**—This article shall be known as the Youth Council Act of 1969. (1969, c. 404, s. 1.)

§ **143-283.25. Declaration of purpose.**—The purpose of this article is to create youth councils at the State and local levels that will provide opportunities for youth to develop leadership skills and become responsible citizens. (1969, c. 404, s. 2.)

§ **143-283.26. Definitions.**—The terms or phrases used in this article shall be defined as follows, unless the context or subject matter otherwise requires:

(1) "Local council" is a youth council that is organized to cooperate with one or more units of local governments or community agencies.

(2) "State Youth Council" is the state-level organization composed of youth members elected on a representative basis from local councils in the

manner prescribed by the Youth Advisory Board.

(3) "Youth Advisory Board" is the state-level, advisory body for the State Youth Council and local youth councils of North Carolina, composed of adult and youth members.

(4) Local youth councils shall be composed of students enrolled in public and nonpublic high schools, and all other youth between the ages of 16 through 18 years residing within a council district. This does not preclude involving younger age groups in projects and activities. (1969, c. 404, s. 3.)

§ 143-283.27. The Advisory Board.—(a) There shall be a Youth Advisory Board consisting of sixteen members. Eight members shall be adults and eight members shall be youth. The Governor shall appoint the eight adult members. Their terms shall be for four years, except that the Governor shall designate one half of the initial appointees to serve two-year terms in order to provide for staggered terms. The initial eight youth members shall be elected by but not necessarily from the membership of the Youth Councils of North Carolina, Inc., with attention given to geographical distribution of members. No more than four of the initial eight members shall come from the cities of Greensboro, High Point, Asheville, Raleigh, Fayetteville and Wilmington, which are the present affiliate cities of the Youth Councils of North Carolina, Inc. The Youth Advisory Board will then devise election procedures for election of future youth members of the Youth Advisory Board.

(b) The Youth Advisory Board shall be the advisory body for the youth councils of North Carolina. It is authorized and empowered to do the following:

(1) To encourage State and local councils to take an active part in governmental and civic affairs, promote and participate in leadership and citizenship programs, and cooperate with other youth oriented groups;

(2) To employ an executive secretary and his staff; and

(3) To accept and use for the purposes of this article any property, funds, service or facilities from any source, subject to limitations of expenditures and audit as prescribed by State law.

(4) The Youth Advisory Board shall elect its own chairman annually from the adult members and a vice-chairman annually from the youth members. A majority of the Board members shall constitute a quorum.

(5) The Board shall meet quarterly on dates to be fixed by the chairman. The Board may be convoked at such other times as the chairman may deem necessary. (1969, c. 404, s. 4.)

State Government Reorganization.—The Youth Advisory Board was transferred to the Department of Administration by § 143A-88, enacted by Session Laws 1971, c. 864.

§ 143-283.28. The State Youth Council.—There shall be a State Youth Council. It shall be established within one year of May 5, 1969 in accordance with the methods and procedures established by the Youth Advisory Board. The State Youth Council is authorized and empowered to do the following:

(1) To consider problems affecting youth and recommend solutions or approaches to these problems to State and local governments and their officials;

(2) To promote state-wide activities for the benefit of youth; and

(3) To elect the youth representatives to the Youth Advisory Board as provided in G.S. 143-283.27. (1969, c. 404, s. 5.)

State Government Reorganization.—The State Youth Council was transferred to the Department of Administration by § 143A-88, enacted by Session Laws 1971, c. 864.

§ 143-283.29. Local youth councils. — The primary purpose of local youth councils is to promote participation by youth in programs affecting civic and governmental affairs. (1969, c. 404, s. 6.)

§ **143-283.30. The executive secretary.**—The executive secretary shall be appointed by the Youth Advisory Board subject to the approval of the Governor to serve at the pleasure of the Governor. He shall coordinate the activities of local youth councils and serve as advisor to the State Youth Council under the internal policies of the Youth Advisory Board. The personnel employed under the provisions of this article shall not be subject to the provisions of the State Personnel Act. (1969, c. 404, s. 7.)

§ **143-283.31. No State funds.**—There shall be no State funds appropriated or expended for use of the State Youth Council or the Youth Advisory Board or the executive secretary. (1969, c. 404, s. 8.)

§ **143-283.32. Reports.**—The executive secretary shall make an annual report on activities covering the twelve months' period prior to June 30th each year. (1969, c. 404, s. 9.)

§§ **143-283.33 to 143-283.40:** Reserved for future codification.

ARTICLE 29D.

Manpower Council.

§ **143-283.41. Short title.**—This Article may be cited as the North Carolina Manpower Council Act. (1971, c. 378, s. 1.)

§ **143-283.42. Definitions.**—As used in this Article, unless the context otherwise requires:

"Administrator" means the North Carolina Manpower Administrator.

"Council" means the North Carolina Manpower Council. (1971, c. 378, s. 2.)

§ **143-283.43. Council established.**—(a) There is hereby established in the North Carolina Department of Administration the North Carolina Manpower Council.

(b) The Council shall be the primary agency of the State to plan and coordinate manpower planning and development programs.

(c) The administrative affairs of the Council shall be administered by the Administrator pursuant to policies, rules, and regulations adopted by the Council. (1971, c. 378, s. 3.)

§ **143-283.44. North Carolina Manpower Council; organization.**—(a) Membership.—The North Carolina Manpower Council shall comprise [be comprised of] 12 citizens appointed by the Governor whose background, training, and experience especially qualify them to take a broad view of the manpower needs of the State and to develop policies and programs calculated to meet those needs. The regular term of appointment shall be four years. In making the initial appointments, the Governor shall appoint six members to serve for a two-year term and six members to serve for a four-year term, in order to initiate staggered terms. Service on the Council shall not be deemed incompatible with the holding of any elective or appointive office under the Constitution of North Carolina, article VI, § 9.

(b) Vacancies.—Any vacancy occurring in the membership of the Council prior to the regular expiration of a term shall be filled by appointment by the Governor for the remainder of the unexpired term.

(c) Chairman.—The Governor shall annually designate a chairman from among the members of the Council. The Council may elect from its membership such other officers as it deems necessary.

(d) Allowances.—The members of the Board [Council] who are not officers or employees of the State shall receive for their services the per diem and allowances prescribed by G.S. 138-5. (1971, c. 378, s. 4.)

§ 143-283.45. Functions. — The Council shall have the following powers and duties:

(1) It shall plan and promote the development of a comprehensive and coordinated State manpower plan, taking into account overall State planning and area planning.

(2) It shall coordinate State manpower and manpower-related programs so as to reduce duplications of programs and activities and to provide for their efficient administration.

(3) It shall be the State sponsor of federal manpower programs in North Carolina.

(4) It shall, through affirmative action of its chairman approve appointment of or removal of its Administrator by the Governor.

(5) It may adopt reasonable rules, regulations, and procedures concerning the organization, administration, and operation of the Council.

(6) It shall advise the General Assembly, the Governor, the State agencies and institutions, the Congress, and the federal agencies with respect to the best means of meeting the manpower needs of North Carolina.

(7) It shall biennially submit to the Governor, for transmittal to the General Assembly, a report on its activities and the progress of manpower development in North Carolina, with recommendations for administrative and legislative actions that it deems needful. (1971, c. 378, s. 5.)

§ 143-283.46. Administrator; functions.—The Administrator shall perform such duties and exercise such powers as may be delegated to him by the Council. (1971, c. 378, s. 6.)

§ 143-283.47. Other State agencies.—(a) The Department of Administration shall provide necessary administrative and staff support to the Council.

(b) Every agency or department of State government shall, upon request of the Council, provide the Council with any information in its possession. (1971, c. 378, s. 7.)

§ 143-283.48. Cooperative Area Manpower Planning System Committee.—The Cooperative Area Manpower Planning System Committee shall act as a technical advisory body to the North Carolina Manpower Council. (1971, c. 378, s. 8.)

§ 143-283.27. The Advisory Board.

ARTICLE 30.

John H. Kerr Reservoir Development Commission.

§ 143-284. Commission created; membership; terms of office; vacancies.

State Government Reorganization.—The John H. Kerr Reservoir Development Commission was transferred to the Department of Natural and Economic Resources by § 143A-122, enacted by Session Laws 1971, c. 864.

§ 143-286. Powers and duties generally; employees as special peace officers; rules and regulations; penalty for violation. — The Commission shall endeavor to promote the development of the John H. Kerr area situated in northeastern North Carolina, and it shall be the duty of the Commission to study the development of this area and to initiate and carry out policies that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation. It shall confer with the various departments, agencies, commissions and officials of the federal government and the governments of the adjoining states in connection with the development of this John H. Kerr area. It shall also advise and confer with any other

State officials or agencies or departments in the State of North Carolina that may be directly or indirectly concerned in the development of the resources of this area, but it shall not in any manner take over or supplant any agencies in their work in this area except so far as is expressly provided for in this Article. It shall also advise and confer with various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall have full power and authority to confer with any similar commission created or acting in that part of the area lying in the state of Virginia for the purpose of working out uniform practices and plans affecting the entire area in both states.

Upon application by the John H. Kerr Reservoir Development Commission, the Governor is hereby authorized and empowered to commission as special officers such of the employees of the John H. Kerr Reservoir Development Commission as the Commission may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of parks, lakes, reservations and other lands or waters under the control or supervision of the John H. Kerr Reservoir Development Commission. Such employees shall receive no additional compensation for performing the duties of special peace officers. Employees so commissioned special peace officers as herein provided shall have the same powers of arrest, give bond, and be required to take an oath as provided for special police officers under G.S. 113-28.2, 113-28.3 and 113-28.4.

The Commission shall have authority to make reasonable rules and regulations for the use by the public of all real and personal property under jurisdiction of the Commission, which rules and regulations, after having been posted in conspicuous places on the Reservoir and filed with the Secretary of State, shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not more than 30 days, or both fine and imprisonment. (1951, c. 444, s. 3; 1953, c. 1312, s. 3; 1961, c. 214; 1963, c. 612, s. 1; 1971, c. 464.)

Editor's Note.—
The 1971 amendment added the last paragraph.

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages.—The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the State Highway Commission, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of a negligent act of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of twenty thousand dollars ($20,000.00). (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "twelve thousand dollars ($12,000.00)" for "ten thousand dollars ($10,000.00)" at the end of the section.

Section 2½ of c. 256, Session Laws 1965, provides that the act shall not apply to claims arising prior to July 1, 1965.

The 1967 amendment, effective July 1, 1967, substituted "fifteen thousand dollars ($15,000.00)" for "twelve thousand dollars ($12,000.00)" at the end of the section. Section 2 of the amendatory act provides that the act shall not apply to claims arising prior to July 1, 1967.

The 1971 amendment, effective July 1, 1971, substituted "twenty thousand dollars ($20,000.00)" for "fifteen thousand dollars ($15,000.00)" at the end of the last sentence.

Section 3 of c. 893, Session Laws 1971, provides that the act shall not apply to claims arising prior to July 1, 1971.

For article on recent developments in North Carolina tort law, see 48 N.C.L. Rev. 791 (1970).

The State cannot be an absolute insurer of the safety of everyone committed to its custody. Taylor v. Stonewall Jackson Manual Training & Indus. School, 5 N.C. App. 188, 167 S.E.2d 787 (1969).

But It Authorizes Claims, etc.—

In accord with original. See Mason v. North Carolina State Highway Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

The Tort Claims Act embraces claims only against State agencies. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Strict Construction.—

In accord with 1st paragraph in original. See Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968).

Acts permitting suit, being in derogation of the sovereign right of immunity, are to be strictly construed. Nello L. Teer Co. v. North Carolina State Highway Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

The manner in which the Industrial Commission transacts its business need not necessarily conform to court procedure. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968).

Procedural Requirements. — In a suit against the State for an alleged tort, the plaintiff cannot complain when the State requires him to follow certain procedural rules before its consent is given to waive its sovereign immunity. Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968).

The legislature has made the procedure in hearings before the Industrial Commission different from the procedures in the superior court. Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968).

Application of Article, etc.—

In accord with 3rd paragraph in original. See Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

Recovery Must Be Based, etc.—

In accord with original. See Mason v. North Carolina State Highway Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

Recovery against the State agency involved must be based upon actionable negligence of an employee of such agency while acting in the scope of his employment. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Before an award of damages can be made under the Tort Claims Act, there must be a finding of a negligent act by an officer, employee, servant or agent of the State. Taylor v. Stonewall Jackson Manual Training & Indus. School, 5 N.C. App. 188, 167 S.E.2d 787 (1969).

The Industrial Commission is to determine whether a claim brought under the Tort Claims Act arose as the result of a negligent act of an employee of the State under such circumstances that if the defendant were a private person there would be liability. Brooks v. University of N.C., 2 N.C. App. 157, 162 S.E.2d 616 (1968).

One who undertakes to do something and does it negligently commits a negligent act, not a negligent omission. Mackey v. North Carolina State Highway Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

Findings Necessary to Authorize Payment.—In order to authorize the payment of compensation, the Industrial Commission's findings must include (1) a negligent act, (2) on the part of a State employee, and (3) while acting in the scope of his employment. Mackey v. North Carolina State Highway Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

There are two kinds of negligence, the one consisting of carelessness and inattention whereby another is injured in his person or property, and the other consisting of a willful and intentional failure or neglect to perform a duty assumed by contract or imposed by operation of law for the promotion of the safety of the person or property of another. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Ordinary negligence has as its basis that a person charged with negligent conduct should have known the probable consequences of his act. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Wanton and willful negligence rests on the assumption that one knew the probable consequences, but was recklessly, wantonly or intentionally indifferent to the results. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Willful or intentional negligence is something distinct from mere carelessness and inattention, however gross. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The true conception of willful negligence involves a deliberate purpose not to discharge some duty necessary to the safety of the person or property of another, which duty the person owing it has assumed by contract or which is imposed on the person by operation of law. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The term "wanton negligence" always implies something more than a negligent act. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

A wanton act is one which is performed intentionally with a reckless indifference to injurious consequences probable to result therefrom. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

An act is wanton when it is done of wicked purpose, or when done needlessly, manifesting a reckless indifference to the rights of others. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

An act is wanton when, being needless, it manifests no rightful purpose, but a reckless indifference to the interests of others; and it may be culpable without being criminal. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The word "wanton" implies turpitude, and the act is committed or omitted of willful, wicked purpose. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

What Constitutes Willful Injury.—To constitute willful injury there must be actual knowledge, or that which the law deems to be the equivalent of actual knowledge, of the peril to be apprehended, coupled with a design, purpose, and intent to do wrong and inflict injury. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The term "willfully" implies that the act is done knowingly and of stubborn purpose, but not of malice. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Gross Negligence.—An analysis of North Carolina decisions impels the conclusion that the Supreme Court, in reference to gross negligence, has used the term in the sense of wanton conduct. Negligence, a failure to use due care, be it slight or extreme, connotes inadvertence. Wantonness, on the other hand, connotes intentional wrongdoing. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Intentional acts are legally distinguishable from negligent acts. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Injuries intentionally inflicted are not compensable under the Tort Claims Act. Davis v. North Carolina State Highway Comm'n, 271 N.C. 405, 156 S.E.2d 685 (1967).

Injuries intentionally inflicted by employees of agencies of the State are not compensable under the Tort Claims Act. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Injuries intentionally inflicted by employees of a State agency are not compensable under the North Carolina Tort Claims Act. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Hence, neither intentional misrepresentation nor conspiracy to defraud is negligence. Davis v. North Carolina State Highway Comm'n, 271 N.C. 405, 156 S.E.2d 685 (1967).

Degree of Negligence Sufficient to Constitute Intentional Tort.—A thorough and exhaustive discussion of the degree of negligence sufficient to constitute an intentional tort depriving the defendant of the defense of contributory negligence appears in Wagoner v. North Carolina R.R., 238 N.C. 162, 77 S.E.2d 701 (1953). Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The North Carolina State Highway Commission is an agency of the State. It is, therefore, not subject to suit except in the manner provided by statute. It may be sued in tort only as authorized in the Tort Claims Act. Davis v. North

Carolina State Highway Comm'n, 271 N.C. 405, 156 S.E.2d 685 (1967).

Immunity of Highway Commission Prior to Tort Claims Act.—Prior to the enactment of the Tort Claims Act, the Highway Commission, as an agency or instrumentality of the State, enjoyed immunity to liability for injury or loss caused by the negligence of its employees. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

The Tort Claims Act empowers the Industrial Commission to pass upon tort claims against the Highway Commission which "arose as a result of a negligent act" of an agent of the State while acting within the scope of his employment by the State. Davis v. North Carolina State Highway Comm'n, 271 N.C. 405, 156 S.E.2d 685 (1967).

An employee of the Highway Commission is personally liable for his own actionable negligence. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

But recovery against the negligent employee must be by common-law action. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968); Mason v. North Carolina State Highway Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

Determination of jurisdiction is the first order of business in every proceeding before the Industrial Commission. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968).

The determination of facts must be found from judicial admissions made by the parties, facts agreed, stipulations entered into and noted at the hearing, and evidence offered in open court, after all parties have been given full opportunity to be heard. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968).

The determination of negligence, proximate cause, and contributory negligence are mixed questions of law and fact in a proceeding under the Tort Claims Act and are reviewable on appeal from the Industrial Commission, and the designation "Finding of Fact" or "Conclusion of Law" by the Commission is not conclusive. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

A party to a compensation case is not entitled to try his case "piecemeal." Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Except as provided in Tort Claims Act, Highway Commission is not subject to suit in tort. Nello L. Teer Co. v. North Carolina State Highway Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

No action, or other proceeding, may be maintained against the State Highway Commission to recover damages for death or other injury caused by its negligence or other tort, except insofar as that right is conferred by the Tort Claims Act. Ayscue v North Carolina State Highway Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967).

And Act Provides Only Remedy against State for Property Damage.—The owner of property cannot maintain an action against the State or any agency thereof in tort for damages to property, except as provided in this article. Shingleton v. State, 260 N.C. 451, 133 S.E.2d 183 (1963).

Thus, Property Owner Cannot Maintain Action against State to Restrain Tort.—A property owner cannot maintain an action against the State to restrain the commission of a tort. Shingleton v. State, 260 N.C. 451, 133 S.E.2d 183 (1963).

And Not for Negligent Omissions.—

The Highway Commission is an agency of the State and is not liable for the negligent omissions of its employees even under the provisions of the Tort Claims Act. Midgett v. North Carolina State Highway Comm'n, 265 N.C. 373, 144 S.E.2d 121 (1965).

The Tort Claims Act permits recovery only for negligent acts of employees of the Highway Commission, not for their negligent omissions or failures to act. Ayscue v. North Carolina State Highway Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967).

The Tort Claims Act permits recovery only for the negligent acts of State employees, but does not permit recovery for their negligent failure to act. Brooks v. University of N.C., 2 N.C. App. 157, 162 S.E.2d 616 (1968).

Under the State Tort Claims Act recovery is permitted for injuries resulting from a negligent act, but not those resulting from a negligent omission on the part of State employees. Mackey v. North Carolina State Highway Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

The requirement of the statute is not met by showing negligence, for negligence may consist of an act or an omission. Failure to act is not an act. Mackey v. North Carolina State Highway Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

Hence, Failure to Remove Gravel from Road Cannot Be Basis for Award.—The failure of the State Highway Commission employees to remove gravel from a road cannot be the basis for an award under the Tort Claims Act. Ayscue v. North Carolina State Highway Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967).

Damages Are Left to Commission's Discretion. — The amount of damages to be awarded is a matter which this section leaves to the discretion of the Commission. Brown v. Charlotte-Mecklenburg Bd. of Educ., 269 N.C. 667, 153 S.E.2d 335 (1967).

Affidavit Must Name Employee and Set Forth Act of Negligence.—It is necessary to recovery that the affidavit filed in support of the claim and the evidence offered before the Commission identify the employee alleged to have been negligent and set forth the specific act or acts of negligence relied upon. Ayscue v. North Carolina State Highway Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967); Brooks v. University of N.C., 2 N.C. App. 157, 162 S.E.2d 616 (1968).

It is necessary to a recovery under this section that the affidavit of claimant set forth the name of the allegedly negligent employee and the acts of negligence relied upon. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Where the affidavit filed with the Commission alleged only that a named person was the road maintenance supervisor for the defendant Highway Commission in the county where the injury occurred on an allegedly defective highway but it did not allege any act done by him and there was no evidence of any negligent act on his part, the record would not support an order for recovery under the Tort Claims Act. Ayscue v. North Carolina State Highway Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967).

Purpose of Naming Negligent Employee.—The purpose of this statute requiring the negligent employee to be named is to enable the department of the State against which the claim is made to investigate, not all of its employees, but the particular ones actually involved. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Amendment of Affidavit to Allege Name of Employee.—In a proceeding under the Tort Claims Act, the Industrial Commission properly allowed amendment of claimant's affidavit to allege the name of the negligent State employee, since the amendment served the purpose of showing the existence of jurisdiction rather than conferring it. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968).

Waiver.—In a Tort Claims Act proceeding, where defendant county board of education made no objection to a member of the Industrial Commission conducting the second hearing, the first hearing and award being conducted by another member of the Commission, the defendant was held to have waived any objection thereto, especially when defendant joined in the request for a second hearing and had sufficient notice beforehand as to the identity of the Commissioner. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968).

Collision Occurring in Virginia.—In an action brought in this State under the Tort Claims Act for a collision which occurred in Virginia, the substantive law of Virginia and the procedural law of North Carolina apply. Parsons v. Alleghany County Bd. of Educ., 4 N.C. App. 36, 165 S.E.2d 776 (1969).

Findings of Commission.—The Commission is not required to make a finding as to each detail of the evidence or as to every inference or shade of meaning to be drawn therefrom. Bundy v. Cabarrus County Bd. of Educ., 5 N.C. App. 397, 168 S.E.2d 682 (1969).

The Industrial Commission is not required to make findings coextensive with the credible evidence. Bundy v. Cabarrus County Bd. of Educ., 5 N.C. App. 397, 168 S.E.2d 682 (1969).

Finding of Fact Supported by Evidence Is Binding on Appeal.—Where Industrial Commissioner found as a fact that minor claimant was not guilty of contributory negligence in a school bus accident, the question was not presented whether the Commission erred in its conclusion of law that the claimant was conclusively presumed incapable of contributory negligence, since the Commission's finding of fact supported by competent evidence is binding on appeal. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968).

Rehearing.—The Industrial Commission, in a proper case, may grant a rehearing and hear additional evidence. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

A motion for a further hearing on the ground of introducing additional or newly discovered evidence rests in the sound discretion of the Industrial Commission and its ruling thereon is not reviewable in the superior court (now the Court of Appeals) in the absence of an abuse of discretion by the Commission. Mason v. North Carolina State Highway Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

Plaintiff was held contributorily negligent as a matter of law in Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Applied in Burlington Indus., Inc. v. State Highway Comm'n 262 N.C. 620, 138 S.E.2d 281 (1964); Bateman v. Elizabeth City State College, 5 N.C. App. 168, 167 S.E.2d 838 (1969).

Stated in Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

Cited in Horney v. Meredith Swimming Pool Co., 267 N.C. 521, 148 S.E.2d 554 (1966); United States v. Muniz, 374 U.S. 150, 83 Sup. Ct. 1850, 10 L. Ed. 2d 805 (1963).

§ **143-291.1. Costs.**—The Industrial Commission is authorized by such order to tax the costs against the loser in the same manner as costs are taxed by the superior court in civil actions. When a State department, institution, or agency appeals the decision rendered by the hearing commissioner to the full Commission, the State department, institution or agency shall furnish a copy of the transcript of the hearing to the appellee without cost therefor. The State department, institution or agency concerned is authorized and directed to pay such costs as may be taxed against it, including all costs heretofore taxed against such department, agency or institution. (1955, c. 1102, s. 2; 1971, c. 58.)

Editor's Note. — The 1971 amendment added the second sentence.

§ **143-293. Appeals to Court of Appeals.**—Either the claimant or the State may, within 30 days after receipt of the decision and order of the full Commission, to be sent by registered or certified mail, but not thereafter, appeal from the decision of the Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them. The appellant shall cause to be prepared a statement of the case as required by the rules of the Court of Appeals. A copy of this statement shall be served on the respondent within 45 days from the entry of the appeal taken; within 20 days after such service, the respondent shall return the copy with his approval or specified amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk of the Court of Appeals as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved. The chairman of the Industrial Commission shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counterstatement of case.

If the case on appeal is returned by the respondent with objections as prescribed, or if a countercase is served on appellant, the appellant shall immediately request the chairman of the Industrial Commission to fix a time and place for settling the case before him. If the appellant delays longer than 15 days after the respondent serves his countercase or exceptions to request the chairman to settle the case on appeal, and delays for such period to mail the case and countercase or exceptions to the chairman, then the exceptions filed by the respondent shall be allowed; or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement of counsel.

The chairman shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, which time shall not be more than 20 days from the receipt of the request. At the time and place stated, the chairman of the Industrial Commission shall settle and sign the case and deliver a copy to the attorneys of each party. The appellant shall within five days thereafter file it with the clerk of the Court of Appeals, and if he fails to do so the respondent may file his copy. (1951, c. 1059, s. 3; 1967, c. 655, s. 1.)

Editor's Note.—The 1967 amendment, effective Oct. 1, 1967, rewrote this section.

Inquiry of Reviewing Court Limited to Two Questions of Law.—In passing upon an appeal from an award of the Industrial Commission, the reviewing court is limited in its inquiry to two questions of law, namely: (1) Whether or not there was any competent evidence before the Commission to support its findings of fact; and (2) whether or not the findings of fact of the Commission justify its legal conclusions and decision. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968); Mason v. North Carolina State Highway Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

Specific findings of fact by the Industrial Commission are required. These must cover the crucial questions of fact upon which plaintiff's right to compensation depends. Otherwise, the reviewing court cannot determine whether an adequate basis exists, either in fact or in law, for the ultimate finding. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

A motion for a further hearing on the ground of introducing additional or newly discovered evidence rests in the sound discretion of the Industrial Commission, and its ruling thereon is not reviewable in the superior court (now the Court of Appeals) in the absence of an abuse of discretion by the Commission. Mason v. North Carolina State Highway Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

Finding of Commission Conclusive, etc.— The findings of fact by the Industrial Commission are conclusive if there is any competent evidence to support them. Mitchell v. Guilford County Bd. of Educ., 1 N.C. App. 373, 161 S.E.2d 645 (1968); Mackey v. North Carolina State Highway Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

The Industrial Commission's findings of fact are conclusive on appeal when supported by competent evidence, except for jurisdictional findings. This is true, even though there is evidence which would support findings to the contrary. Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968).

The Industrial Commission's findings of fact are conclusive on appeal when supported by competent evidence, except for jurisdictional findings. This is true, even though there is evidence which would support findings to the contrary. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Findings of Commission Are Subject to Review. — Findings by the Commission which are mixtures of findings of fact and conclusions of law are subject to review by the superior court (now the Court of Appeals), and by the Supreme Court, on appeal. Brown v. Charlotte-Mecklenburg Bd. of Educ., 269 N.C. 667, 153 S.E.2d 335 (1967).

Additional Facts May Not Be Found on Appeal.—Upon an appeal from the Industrial Commission, the reviewing court may not find facts in addition to those found by the Commission, even though there is in the record evidence to support such a finding, the appeal being for errors of law only. Brown v. Charlotte-Mecklenburg Bd. of Educ., 269 N.C. 667, 153 S.E.2d 335 (1967).

Remand on Ground of Newly Discovered Evidence.—In the superior court (now the Court of Appeals) upon appeal from an award by the Industrial Commission, the court has power in a proper case to order a rehearing, and to remand the proceeding to the Industrial Commission, on the ground of newly discovered evidence, but this is a matter within the sound discretion of the court. Mason v. North Carolina State Highway Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

Ordinarily, the limited authority of the reviewing court does not permit the trial judge to order remand of the cause for the taking of additional evidence. However, the judge of the superior court (now the Court of Appeals) may remand a cause to the Industrial Commission on ground of newly discovered evidence in a proper case, and such proper case is made out only when it appears by affidavits: (1) that the witness will give the newly discovered evidence; (2) that it is probably true; (3) that it is competent, material, and relevant; (4) that due diligence has been used and the means employed, or that there has been no laches, in procuring the testimony at the trial; (5) that it is not merely cumulative; (6) that it does not tend only to contradict a former witness or to impeach or discredit him; and (7) that it is of such a nature as to show that on another trial a different result will probably be reached and that the right will prevail. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Remand for Misapprehension of Law.— Where facts are found or where the Commission fails to find facts under a misapprehension of law, the court will, where the ends of justice require, remand the cause so that the evidence may be considered in its true legal light. Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968); Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Remand Where Findings Insufficient.— When the findings are insufficient to enable the reviewing court to determine the rights of the parties, the case must be remanded to the Commission for proper findings. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Quoted in Bateman v. Elizabeth City State College, 5 N.C. App. 168, 167 S.E.2d 838 (1969).

Stated in Parsons v. Alleghany County Bd. of Educ., 4 N.C. App. 36, 165 S.E.2d 776 (1969).

§ **143-294. Appeal to Court of Appeals to act as supersedeas.**—The appeal from the decision of the Industrial Commission to the Court of Appeals shall act as a supersedeas, and the State department, institution or agency shall not be required to make payment of any judgment until the questions at issue therein shall have been finally determined as provided in this article. (1951, c. 1059, s. 4; 1967, c. 655, s. 2.)

Editor's Note.—The 1967 amendment, effective Oct. 1, 1967, substituted "Court of Appeals" for "superior court."

§ **143-295. Settlement of claims.**—Any claim hereinafter listed, or any other claim hereinafter filed with the Industrial Commission, may be settled upon agreement between the claimant and the department, institution, or agency of the State involved without a formal hearing. Such settlements shall be subject to approval, however, by the office of the Attorney General of North Carolina with reference to all claims against all departments, institutions, and agencies of the State; all settlements shall be subject to approval by the North Carolina Industrial Commission. (1951, c. 1059, s. 5; 1971, c. 1103, s. 1.)

Editor's Note.—

The 1971 amendment, in the second sentence, deleted "other than the State Highway Commission, and settlements of claims against the State Highway Commission shall be subject to approval by the chief counsel of that department, and" following "State."

§ **143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit.**—In all claims listed in § 13 of Chapter 1059 of the Session Laws of 1951, and all claims which may hereafter be filed against the various departments, institutions, and agencies of the State, the claimant or the person in whose behalf the claim is made shall file with the Industrial Commission an affidavit in duplicate, setting forth the following information:

(1) The name of the claimant;

(2) The name of the department, institution or agency of the State against which the claim is asserted, and the name of the State employee upon whose alleged negligence the claim is based;

(3) The amount of damages sought to be recovered;

(4) The time and place where the injury occurred;

(5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim.

Upon receipt of such affidavit in duplicate, the Industrial Commission shall enter the case upon its hearing docket and shall hear and determine the matter in the county where the injury occurred unless the parties agree or the Industrial Commission directs that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard.

Immediately upon docketing the case, the Industrial Commission shall forward one copy of plaintiff's affidavit to the office of the Attorney General of North Carolina if the claim is asserted against any department, institution, or agency of the State.

The department, institution or agency of the State against whom the claim is asserted shall file answer, demurrer or other pleading to the affidavit within 30 days after receipt of copy of same setting forth any defense it proposes to make in the hearing or trial, and no defense may be asserted in the hearing or trial unless it is alleged in such answer, except such defenses as are not required by the Code of Civil Procedure or other laws to be alleged. (1951, c. 1059, s. 9; 1963, c. 1063; 1971, c. 893, s. 2; c. 1103, s. 2.)

Editor's Note.—

The first 1971 amendment, effective July 1, 1971, inserted "or the Industrial Commission directs" in the first sentence of the second paragraph.

The second 1971 amendment, in the third paragraph, deleted "other than the State Highway Commission" following "State" in the first sentence, and deleted a former second sentence.

Section 3 of c. 893, Session Laws 1971, provides that the act shall not apply to claims arising prior to July 1, 1971.

Negligent planning or negligent execution of plans may give rise to a tort claim. Wrape v. North Carolina State Highway Comm'n, 263 N.C. 499, 139 S.E.2d 570 (1965)

But Not Omission.—An omission or failure to act will not support a tort claim. Wrape v. North Carolina State Highway Comm'n, 263 N.C. 499, 139 S.E.2d 570 (1965).

Thus, No Recovery Allowed under Article Where Highway Construction Plans Not Alleged to Be Faulty.—The owner of a pond may not recover under the State Tort Claims Act for damage to the pond resulting from silt washed down from a fill necessarily incident to the improvement of a highway, the improvement having been made in accordance with the plans and specifications, and there being no contention that the plans and specifications were faulty or negligently formulated. Wrape v. North Carolina State Highway Comm'n, 263 N.C. 499, 139 S.E.2d 570 (1965).

However, Property Taken Must Be Compensated for in Absence of Negligence.—In the absence of negligent acts, the owner of property is entitled to compensation if the construction of highways amounts to a taking of his property. Wrape v. North Carolina State Highway Comm'n, 263 N.C. 499, 139 S.E.2d 570 (1965).

Affidavit Must Name Employee and Set Forth Acts of Negligence.—It is necessary to recovery under the Tort Claims Act that the affidavit of the claimant set forth the name of the allegedly negligent employee and the acts of negligence relied upon. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968).

The purpose of this section, etc.—

The reason for requiring the negligent employee to be named in the affidavit is so that the department of the State against which claim is made will not have to investigate all of its employees, but only those alleged to have been negligent. Mason v. North Carolina State Highway Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

Remedy If Claimant Names Wrong Employee.—If a claimant mistakenly names a wrong employee, his remedy is to address a motion to amend the affidavit to the sound discretion of the Industrial Commission. Mason v. North Carolina State Highway Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

Amendment to Affidavit after Time Allowed.—The affidavit filed by a claimant pursuant to this section is in the nature of a complaint in an ordinary tort action, and the allowance of an amendment thereto after the expiration of the time allowed by statute, rests in the sound discretion of the Industrial Commission, and its ruling thereon is not subject to review in the absence of an abuse of such discretion. Mason v. North Carolina State Highway Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

Applied in Parsons v. Alleghany County Bd. of Educ., 4 N.C. App. 36, 165 S.E.2d 776 (1969).

§ 143-298. Duty of Attorney General; expenses.—It shall be the duty of the Attorney General to represent all departments, institutions, and agencies of the State in connection with claims asserted against them and to attend all hearings in connection therewith where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance. In the event the amount appropriated to the Attorney General's office for travel and subsistence is insufficient to take care of the additional expense incident to attending these hearings, the Governor and Council of State are authorized to pay such additional travel expenses from the contingency and emergency fund. (1951, c. 1059, s. 10; 1971, c. 1103, s. 3.)

Editor's Note.—

The 1971 amendment deleted "other than the State Highway Commission" following "State" in the first sentence.

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.

Contributory Negligence Bars Recovery.—The State Tort Claims Act does not authorize recovery unless the claimant is free from contributory negligence. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Contributory Negligence of Minor. — Substantive case law concerning a minor's capability for negligence applies to this section, and thus a six-year-old child is incapable of contributory negligence as a matter of law. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

§ 143-300. Rules and regulations of Industrial Commission; destruction of records.—The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this Article. When any case or claim under this Article has been closed by proper order or award, all records concerning such case or claim may, after five years, in the discretion of the Industrial Commission with and by the authorization of the North Carolina Department of Archives and History, be destroyed by burning or otherwise; provided, that no record pertaining to a case or claim of a minor shall be destroyed until the expiration of three years after such minor attains the age of 18 years. (1951, c. 1059, s. 12; 1957, c. 311; 1971, c. 1231, s. 1.)

Editor's Note.—

The 1971 amendment substituted "18" for "21" in the second sentence.

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.—(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged negligent act or omission of the driver of a public school bus or school transportation service vehicle when the salary of such driver is paid from the State Nine Months School Fund who is an employee of the county or city administrative unit of which such board is the governing board, and which driver was at the time of such alleged negligent act or omission operating a public school bus or school transportation service vehicle in the course of his employment by such administrative unit or such board. The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by § 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made, one copy of the plaintiff's affidavit to the State Board of Education and one copy of the plaintiff's affidavit to the office of the Attorney General of North Carolina. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is a governing board, to the State Board of Education and also to the office of the Attorney General of North Carolina.

(b) The Attorney General shall be charged with the duty of representing the city or county board of education in connection with claims asserted against them pursuant to this section where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance.

(c) In the event that the Industrial Commission shall make any award of damages against any county or city board of education pursuant to this section, such county or city board shall draw a requisition upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall then have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the nine months school term. It shall be the duty of the county or city board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the county or city board of education, the county or city administrative unit, nor the tax levying authorities for the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such requisition by the State Board of Education. Settlement may be effected as provided in G.S. 143-295 with the approval of the State Board of Education, subject to the approval of the office of the Attorney General as counsel and to the approval of the North Carolina Industrial Commission.

(d) Neither State Board of Education nor any other department, institution or agency of the State shall be liable for the payment of any tort claim arising out of the operation of any public school bus or for school transportation service vehicle, or for the payment of any award made pursuant to the provisions of this article on account of any such claim. (1955, c. 1283; 1961, c. 1102, ss. 1-3; 1967, c. 1032, s. 1.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, rewrote subsections (a), (b), and (c) and reenacted subsection (d) substantially without change. Prior to the amendment, claims were defended by the attorney for the county or city board of education and not the Attorney General. Section 5 of the amendatory act provides that any claims now pending may be sent to the office of the Attorney General for handling in the discretion of the city or county attorney presently handling such claim.

Affidavit Must Name Employee and Set Forth Acts of Negligence.—It is necessary to a recovery under this section that the affidavit of claimant set forth the name of the allegedly negligent employee and the acts of negligence relied upon. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Purpose of Naming Employee. — The purpose of this statute requiring the negligent employee to be named is to enable the department of the State against which the claim is made to investigate, not all of its employees, but the particular ones actually involved. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Amendment of Affidavit to Allege Name of Employee.—In a proceeding under the Tort Claims Act, the Industrial Commission properly allowed amendment of claimant's affidavit to allege the name of the negligent State employee, since the amendment served the purpose of showing the existence of jurisdiction rather than conferring it. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968).

State Board of Education, etc.—

In accord with original. See Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

Applied in Mitchell v. Guilford County Bd. of Educ., 1 N.C. App. 373, 161 S.E.2d 645 (1968).

ARTICLE 31A.

Defense of State Employees.

§ **143-300.2. Definitions.**—Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(1) "Civil or criminal action or proceeding" includes any case, prosecution,

special proceeding, or administrative proceeding in or before any court or agency of this State or any other state or the United States.

(2) "Employee" includes an officer, agent, or employee but does not include an independent contractor.

(3) "Employment" includes office, agency, or employment.

(4) "The State" includes all departments, agencies, boards, commissions institutions, bureaus, and authorities of the State. (1967, c. 1092, s. 1.)

Cited in Brotherton v. Paramore, 5 N.C. App. 657, 169 S.E.2d 36 (1969).

§ 143-300.3. Defense of State employees.—Except as otherwise provided in § 143-300.4, upon request of an employee or former employee, the State may provide for the defense of any civil or criminal action or proceeding brought against him in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of his employment as a State employee. (1967, c. 1092, s. 1.)

§ 143-300.4. Grounds for refusal of defense.—(a) The State shall refuse to provide for the defense of a civil or criminal action or proceeding brought against an employee or former employee if the State determines that:

(1) The act or omission was not within the scope and course of his employment as a State employee; or

(2) The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part; or

(3) Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee; or

(4) Defense of the action or proceeding would not be in the best interests of the State.

(b) The determinations required by subsection (a) of this section shall be made by the Attorney General. The Attorney General may delegate his authority to make these determinations to the chief administrative authority of any agency, institution, board, or commission whose employees are to be defended as provided by subdivision (3) or (4) of § 143-300.5. Approval of the request by an employee or former employee for provision of defense shall raise a presumption that the determination required by this section had been made and that no grounds for refusal to defend were discovered. (1967, c. 1092, s. 1.)

§ 143-300.5. Regulations for providing defense counsel.—The Governor may issue regulations for the defense of employees or former employees of the State pursuant to this article through one or more of the following methods as may be appropriate to the employee or class of employees in question:

(1) By the Attorney General;

(2) By employing other counsel for this purpose as provided in § 147-17;

(3) By authorizing the purchase of insurance which requires that the insurer provide or underwrite the cost of the defense; or

(4) By authorizing defense by counsel assigned to or employed by the department, agency, board, commission, institution, bureau, or authority which employed the person requesting the defense. (1967, c. 1092, s. 1.)

ARTICLE 33.

Judicial Review of Decisions of Certain Administrative Agencies.

§ 143-306. Definitions.

Editor's Note.—

For note on judicial review of student disciplinary proceedings, see 43 N.C.L. Rev. 152 (1964).

For case law survey as to judicial review of decisions of administrative agencies, see 45 N.C.L. Rev. 816 (1967).

The primary purpose of this article is to confer the right to judicial review. In re Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

Liberal Construction.—This article should be liberally construed to preserve and effectuate the right to judicial review. In re Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

Article Contemplates Decision on Factual Situation.—This article contemplates a quasi-judicial hearing in which the parties were permitted an opportunity to offer evidence and a decision rendered applicable to a specific factual situation. Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

It Does Not Authorize Review of Executive Interpretation of Statute. — This article does not authorize the filing of a petition in the superior court seeking an advisory opinion on the correctness of an executive interpretation of a statute. Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Decision of State Board of Elections Only Reviewable under This Article. — When the State Board of Elections obtains jurisdiction of an election protest upon an appeal from a single county in a multiple county senatorial district, or by the filing in apt time of a protest directly with the State Board of Elections, its decision can only be reviewed in the manner prescribed by this article. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Applied in In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964); In re Freight Carriers, Inc., 263 N.C. 345, 139 S.E.2d 633 (1965); In re Housing Authority, 265 N.C. 719, 144 S.E.2d 904 (1965); National Food Stores v. North Carolina Bd. of Alcoholic Control, 268 N.C. 624, 151 S.E.2d 582 (1966); Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

Cited in In re Newsom Oil Co., 273 N.C. 383, 160 S.E.2d 98 (1968); Carter v. State Bd. of Alcoholic Control, 274 N.C. 484, 164 S.E.2d 1 (1968); Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970); In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

§ 143-307. Right to judicial review.

Necessity for Exhaustion, etc.—

In accord with original. See Porter v. State Bd. of Alcoholic Control, 4 N.C. App. 284, 166 S.E.2d 695 (1969).

County as Party Aggrieved.—A county is a party aggrieved and entitled to appeal from a decision of the State Board of Assessment reducing the valuation of property appraised by the county for tax purposes. In re Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

Decisions Are Reviewable under This Article If No Other Adequate Procedure Provided.—Absent adequate procedure for judicial review by some other statute, decisions of administrative agencies are subject to review in the superior court as provided in this article. State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

Findings of fact and conclusions of law made by the State Board of Elections may be reviewed in an action instituted in the superior court of a county pursuant to the provisions of this section. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

But appellant is not entitled to a jury trial in such action. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Certiorari Lies to Review Suspension of University Student.—Certiorari lies to review an order of the board of trustees of the University of North Carolina affirming the suspension of a student from the University for cheating, since the board of trustees is not an agency in the legislative or judicial branches of the government. nor an agency governed by § 150-9 et seq., and, therefore, no other statutory provision exists for review of its actions. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

§ 143-309. Manner of seeking review; time for filing petition; waiver.

Strict Construction.—The provisions of this section providing for the waiver or forfeiture of the right to judicial review under certain conditions should be construed strictly; and, when so construed, the right to petition for review continues unless and until thirty days have expired from the date "a written copy" of the administrative order has been served on the party seeking review either by personal service or by registered mail, return receipt requested. In re Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

Applied in Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964); Clark Equip. Co. v. Johnson, 261 N.C. 269, 134 S.E.2d 327 (1964); J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

Quoted in Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Cited in Freeman v. Board of Alcoholic Control, 264 N.C. 320, 141 S.E.2d 499 (1965).

§ 143-311. Record filed by agency with clerk of superior court; contents of record; costs.

Cited in Porter v. State Bd. of Alcoholic Control, 4 N.C. App. 284, 166 S.E.2d 695 (1969).

§ 143-314. Review by court without jury on the record.

Applied in J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

Cited in Freeman v. Board of Alcoholic Control, 264 N.C. 320, 141 S.E.2d 499 (1965).

§ 143-315. Scope of review; power of court in disposing of case.

The "whole record" test is applicable upon a review under this section, and the decision of the Board may be reversed if substantial rights of the licensee are prejudiced by administrative findings, inferences, conclusions or decisions which are not supported "by competent, material, and substantial evidence in view of the entire record as submitted." Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

Review of Order of State Board, etc.—When a judicial review is sought in the superior court on the record made before the State Board of Assessment, that court is without authority to make findings at variance with the findings of the Board which are supported by material and substantial evidence because that is the exclusive function of the State Board of Assessment. In re Appeal of Reeves Broadcasting Corp., 273 N.C. 571, 160 S.E.2d 728 (1968).

Review of Award of Industrial Commission.—In passing upon an appeal from an award of the Industrial Commission, the reviewing court is limited in its inquiry to two questions of law, namely: (1) whether or not there was any competent evidence before the Commission to support its findings of fact; and (2) whether or not the findings of fact of the Commission justify its legal conclusions and decision. Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970).

The superior court is without power to order the North Carolina Board of Alcoholic Control to issue a permit to petitioners, but can order the Board to exercise its discretion in accordance with law. Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970).

Court May Not Substitute Its Evaluation of Evidence for Board's.—Where the superior court at the instance of appellant found additional facts which the Tax Review Board had, although requested, refused to make, the court, in making these findings, weighed the evidence and substituted its evaluation of the evidence for that of the Board and in so doing, it exceeded its right of review. Clark Equip. Co. v. Johnson, 261 N.C. 269, 134 S.E.2d 327 (1964).

Applied in In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964); Jamison v. Kyles, 271 N.C. 722, 157 S.E.2d 550 (1967); Civil Serv. Bd. v. Page, 2 N.C. App. 34, 162 S.E.2d 644 (1968); Ormond v. Garrett, 8 N.C. App. 662, 174 S.E.2d 371 (1970).

§ 143-316. Appeal to appellate division; obtaining stay of court's decision.—Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1953, c. 1094, s. 11; 1969, c. 44, s. 76.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" near the beginning and at the end of the section.

A legal proceeding must be prosecuted by a legal person, whether it be a natural person, sui juris, or a group of individuals or other entity having the capacity to sue and be sued, such as a corporation, partnership, unincorporated association, or governmental body or agency. Even a class action must be prosecuted or defended by one or more named members of the class. A legal proceeding prosecuted by an aggregation of anonymous individuals, known only to their counsel, is a phenomenon unknown to the law of this jurisdiction. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

The rule that an appeal to the appellate division may be prosecuted only at the instance of a party or parties aggrieved by the judgment of the court or tribunal from which the appeal is taken, applies with as much force to proceedings governed by this Article as to ordinary civil cases. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

Cited in Freeman v. Board of Alcoholic Control, 261 N.C. 320, 141 S.E.2d 499 (1965).

ARTICLE 33A.

Rules of Evidence in Administrative Proceedings before State Agencies.

§ 143-317. Definitions.—As used in this article,

(1) "Administrative agency" means any State authority, board, bureau, commission, committee, department, or officer authorized by law to make administrative decisions, except those agencies in the legislative and judicial departments of government, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Employment Security Commission of North Carolina, and the institutions and agencies that operate pursuant to chapters 115, 115A, and 116 of the General Statutes.

(2) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(3) "Proceeding" shall mean any proceeding, by whatever name called, before an administrative agency of the State, wherein the legal rights, duties, or privileges of specific parties are required by law or by constitutional right to be determined after an opportunity for agency hearing. (1967, c. 930.)

This section and § 143-318 apply only to judicial or quasi-judicial proceedings. In re Filing by Auto. Rate Office, 278 N.C. 302, 180 S.E.2d 155 (1971).

Involving Loss of Right by Specific Party.—Subsection (3) shows that § 143-318 was intended to apply only to hearings which might result in a loss by a specific party of some legal right, duty or privilege, such as hearings relating to the revocation of the license of a specified insurance agent or of a specified insurance company or to the imposition of a fine or penalty upon an insurance agent or insurance company for violation of the "Insurance Law." Such hearings involve the essential elements of a court trial, and in such cases, the Attorney General, as legal adviser to the Commissioner of Insurance, can provide counsel as to whether proffered evidence complies with the rules of evidence as applied in the superior and district court divisions of the General Court of Justice. In re Filing by Auto. Rate Office, 278 N.C. 302, 180 S.E.2d 155 (1971).

But Not Hearing on Proposals for General Rate Revision.—This section and § 143-318 are not applicable to a public hearing before the Commissioner of Insurance on proposals for a general revision of insurance rates submitted by a statutory rate-making bureau such as the rate office. In re Filing by Auto. Rate Office, 278 N.C. 302, 180 S.E.2d 155 (1971).

Applicable to State Personnel Board Hearings.—See opinion of Attorney General to Mr. Claude Caldwell, Director, State Personnel Department, 3/18/70.

§ 143-318. Rules of evidence official notice.—In all proceedings:

(1) Incompetent, irrelevant, immaterial, unduly repetitious, and hearsay evidence shall be excluded. The rules of evidence as applied in the superior and district court divisions of the General Court of Justice shall be followed.

(2) Documentary evidence may be received in the form of copies or ex-

cerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (1967, c. 930.)

Cross Reference.—See note under § 143-317.

ARTICLE 33B.

Meetings of Governmental Bodies.

§ **143-318.1. Public policy.** — Whereas the commissions, committees, boards, councils and other governing and governmental bodies which administer the legislative and executive functions of this State and its political subdivisions exist solely to conduct the peoples' business, it is the public policy of this State that the hearings, deliberations and actions of said bodies be conducted openly. (1971, c. 638, s. 1.)

Editor's Note.—Session Laws 1971, c. 638, s. 2, provides: "All laws and clauses of laws in conflict with the provisions of this act, including (without limitation) all laws and clauses of laws without state-wide application, are hereby repealed."

Session Laws 1971, c. 638, s. 3, makes the act effective July 1, 1971.

§ **143-318.2. All official meetings open to the public.**—All official meetings of the governing and governmental bodies of this State and its political subdivisions, including all State, county, city and municipal commissions, committees, boards, authorities, and councils and any subdivision, subcommittee, or other subsidiary or component part thereof which have or claim authority to conduct hearings, deliberate or act as bodies politic and in the public interest shall be open to the public. And every meeting, assembly, or gathering together at any time or place of a majority of the members of such governing or governmental body for the purpose of conducting hearings, participating in deliberations or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of said body shall constitute an official meeting, but any social meeting or other informal assembly or gathering together of the members of any such body shall not constitute an official meeting unless called or held to evade the spirit and purposes of this Article. (1971, c. 638, s. 1.)

§ **143-318.3. Executive, closed and private sessions.**—(a) Any of the bodies specified in G.S. 143-318.1, by the votes of a majority of its members present, may, during any regular or special meeting when a quorum is present, hold an executive session and exclude the public while considering:

(1) Acquisition, lease, or alienation of property;

(2) Negotiations between public employers and their employees or representatives thereof as to employment;

(3) Matters dealing with patients, employees or members of the medical staff of a hospital or medical clinic (including but not limited to all aspects of admission, treatment, and discharge, all medical records, reports and summaries, and all charges, accounts and credit information pertaining to said patients; all negotiations, contracts, conditions, assignments, regulations and disciplines relating to employees; and all aspects of hospital management, operation and discipline relating to members of the medical staff);

(4) Any matter coming within the physician-patient, lawyer-client or any other privileged relationship;

(5) Conferences with legal counsel and other deliberations concerning the prosecution, defense, settlement or litigation of any judicial action or proceeding in which the governing or governmental body is a party or by which it is directly affected.

(b) This Article shall not be construed to prevent any governing or governmental body specified in G.S. 143-318.1 from holding closed sessions to consider information regarding the appointment, employment, discipline, termination or dismissal of an employee or officer under the jurisdiction of such body and to hear and consider testimony on a complaint against such employee or officer; provided, however, that final action on the discharge of any employee for cause after hearing shall be taken in open session if such discharge is within the exclusive jurisdiction of said governing body. Nor shall this Article be construed to prevent any board of education or governing body of any public educational institution, or any committee or officer thereof, from hearing, considering and deciding disciplinary cases involving students in closed session.

(c) When any county board of commissioners or the governing body of any municipal corporation or board of education is faced with the existence of a riot or with conditions indicating that a riot or public disorders are imminent, within the territorial jurisdiction of such board or governing body, the board of commissioners of such county or the governing body of such municipal corporation or board of education, as the case may be, may meet in private session with such law-enforcement officers and others invited to any such meeting, excluding other members of the public, for the purpose of considering and taking appropriate action deemed necessary to cope with the existing situation during any such emergency. (1971, c. 638, s. 1.)

§ **143-318.4. Exceptions.**—The agencies or groups following are excluded from the provisions of G.S. 143-318.2:

(1) The Council of State
(2) The Board of Awards
(3) The N.C. State Board of Paroles
(4) The State Probation Commission
(5) All law-enforcement agencies
(6) Grand and petit juries
(7) All study, research and investigative commissions and committees including the Legislative Services Commission.
(8) All State agencies, commissions or boards exercising quasi-judicial functions during any meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding
(9) Every board enumerated in G.S. 150-9 and every board, commission, council or other body, or any committee thereof, authorized by statute to investigate, examine and determine the character and other qualifications of applicants for license to practice any profession in this State, or authorized to suspend or revoke licenses of, or to reprimand or take disciplinary action concerning any person licensed to engaged in the practice of any profession in this State; provided, however, that nothing in this Article shall be construed to amend, repeal or supersede any statute, now existing or hereafter enacted, which requires a public hearing or other practice and procedure in any proceeding before any such board, commission or other body, or any committee thereof.
(10) Any committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal embarrassment or when it is in the best interest of the State; and in no

event shall any final action be taken by any committee or subcommittee except in open session. (1971, c. 638, s. 1.)

§ 143-318.5. Advisory Budget Commission and appropriation committees of General Assembly; application of Article.—(a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-10 (or any similar statute hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) Nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees of the House of Representatives and the Senate of the General Assembly of North Carolina, and subcommittees thereof. (1971, c. 638, s. 1.)

§ 143-318.6. Mandamus and injunctive relief. — Any citizen denied access to a meeting required to be open by the provisions of this Article, in addition to other remedies, shall have a right to compel compliance with the provisions of this Article by application to a court of competent jurisdiction for restraining order, injunction or other appropriate relief. (1971, c. 638, s. 1.)

§ 143-318.7. Disruptions.—Any person who wilfully interrupts, disturbs, or disrupts any official meeting required to be open to the public by this Article and who, upon being directed to leave such meeting by the presiding officer thereof, wilfully refuses to leave such meeting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment for not in excess of six months, pay a fine of two hundred fifty dollars ($250.00), or by both such fine and imprisonment. (1971, c. 638, s. 1.)

ARTICLE 34.

North Carolina Department of Local Affairs.

§ 143-319. Department established.—There is hereby established the North Carolina Department of Local Affairs. (1969, c. 1145, s. 1.)

Editor's Note.—Session Laws 1969, c. 1145, s. 5, makes the act effective July 1, 1969.

Former article 34, comprising §§ 143-317 through 143-328, and relating to the Board of Water Commissioners and water conservation and education, was repealed by Session Laws 1959, c. 779, s. 2.

State Government Reorganization.—The Human Resources Division of the Department of Local Affairs was transferred to the Department of Human Resources by § 143A-162, enacted by Session Laws 1971, c. 864.

§ 143-320. Definitions.—As used in this article, unless the context otherwise requires:

"Council" means the Advisory Council on Local Affairs.

"Department" means the North Carolina Department of Local Affairs.

"Director" means the Director of Local Affairs.

"Division" means a division of the Department of Local Affairs.

"Recreation" means those interests that are diversionary in character and that aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure nature, and includes all governmental, private nonprofit and commercial recreation forms of the recreation field and includes parks, conservation, recreation travel, the use of natural resources, wilderness and high density recreation types and the variety of recreation interests in areas and programs which are incorporated in this range. (1969, c. 1145, s. 1.)

§ **143-321. Structure and organization of Department.**—(a) Director.—The Department of Local Affairs shall be under the direction and control of the Director of Local Affairs, who shall be responsible to the Governor for the administration of the Department. The Director shall be appointed by the Governor and shall serve at the pleasure of the Governor. The salary of the Director shall be fixed by the Governor with the approval of the Advisory Budget Commission. The Governor may appoint an Acting Director of Local Affairs to serve during the absence or disability of the Director or pending an appointment to fill a vacancy in the office of Director, and may fix his salary with the approval of the Advisory Budget Commission.

(b) Divisions. — The Department shall be organized initially to include a Recreation Division, a Law and Order Division, and a Community Planning Division. The Director, with the approval of the Governor, may establish within the Department additional divisions and other organizational units. Each division shall be under the immediate supervision and control of a division head, who shall be responsible to the Director for the administration of that division.

(c) Advisory Council.—There shall be an Advisory Council on Local Affairs, which shall be advisory to the Director. The Council shall consist of the Director, who shall be a member ex officio, and 18 persons appointed by the Governor to serve at his pleasure. At least three of the appointed members shall be persons each of whom at the time of his appointment is serving as a mayor or member of a municipal governing board; at least three of the appointed members shall be persons each of whom at the time of his appointment is serving as a member of a board of county commissioners; at least one member recommended by the North Carolina League of Municipalities; and at least one member recommended by the North Carolina Association of County Commissioners. The initial members of the Council shall be appointed on July 1, 1969, or as soon as is practicable thereafter, and shall include at least one member of the North Carolina Recreation Commission, at least one member of the Governor's Committee on Law and Order, and at least one member of the Board of Conservation and Development, who were serving on June 30, 1969 and who shall serve on the Council for the remainder of their respective current terms as members of the Commission, Committee, and Board. The Council shall elect from its appointed members a chairman to serve during the term for which he is appointed and for a period not to exceed two years. The disciplines and special interests initially represented on the Council shall continue to be generally represented in subsequent appointments. The members of the Council shall serve without compensation, except that they shall be entitled to receive reimbursement of expenses incurred in performance of their duties as provided in G.S. 138-5. The Council shall meet on call of the Director or the chairman at least once a year. The Director shall furnish the Council with necessary staff assistance and other support.

(d) Committees.—(1) There shall be a Committee on Recreation, which shall consist of the president of the North Carolina Recreation and Parks Society, Inc., ex officio, and nine members appointed by the Governor to serve overlapping terms of six years. Of the initial appointments to the Committee, three shall be for a term of two years, three shall be for a term of four years, and three shall be for a term of six years. All regular appointments thereafter shall be for a term of six years. Any appointed member may be removed by the Governor at will. An appointment to fill a vacancy shall be for the remainder of the unexpired term. The Governor shall annually designate a member of the committee to serve as its chairman.

(2) There shall be a Committee on Law and Order, which shall consist of the Governor, Attorney General, Director of the State Bureau of Investiga-

tion, Commander of the State Highway Patrol, Director of Administration, Chairman of the North Carolina Good Neighbor Council, Director of the Administrative Office of the Courts, Commissioner of Correction, Chairman of the Board of Paroles, Director of the Probation Commission, Adjutant General, and Commissioner of Motor Vehicles, all serving ex officio, and 14 members appointed by the Governor, which number shall consist of one sheriff, two police executives, one judge of the superior court, one judge of the district court, one solicitor of the superior court, two citizens of the State with a knowledge of juvenile delinquency, three officials representing local government, one attorney specializing in the defense of criminal cases, and two citizens of the State who are not public officials. All appointed members shall serve for a term of one year and shall be eligible for reappointment. All members who are public officers shall serve as members ex officio of the Committee and shall perform their duties on the Committee in addition to their regular duties imposed by law. The Governor shall annually designate a member of the Committee to serve as its chairman.

(3) There shall be a Committee on Community Planning, which shall consist of the president of the North Carolina Chapter of the American Institute of Planners, ex officio, and nine members appointed by the Governor. At least five of the nine members shall, at the time of their appointment, be members of municipal, county, or joint planning boards. All appointed members shall serve for a term of one year. The Governor shall annually designate a member of the Committee to serve as its chairman.

(4) The Director may establish additional committees and advisory agencies to the Department and its divisions. Each committee shall meet on call of its chairman or the Director at least quarterly. The members of the committees shall serve without compensation, except that they shall be entitled to receive reimbursement of expenses incurred in performance of their duties as provided in G.S. 138-5. (1969, c. 1145, s. 1.)

State Government Reorganization.—The Department of Local Affairs was transferred to the Department of Natural and Economic Resources by §§ 143A-128 and 143A-129, enacted by Session Laws 1971, c. 864.

§ **143-322. Functions of Director.**—The Director of Local Affairs shall have the following powers and duties:

(1) To administer the Department of Local Affairs.

(2) With the approval of the Governor, to organize and reorganize the Department and its several divisions and other units.

(3) To assign and reassign the duties and functions of the Department among the several divisions and other units, division heads, officers, and employees of the Department.

(4) To perform all duties, exercise all powers, and assume and discharge all responsibilities vested by law in the Department, except as otherwise expressly provided by statute.

(5) To delegate to any division head or to any other officer or employee of the Department any of the powers and duties given to the Director or the Department by statute or by the rules, regulations, and procedures established pursuant to this article.

(6) To appoint, with the approval of the Governor, the head of each division of the Department, and to remove at will the head of any division, acting with the approval of the Governor.

(7) To appoint all subordinate officers and employees of the Department, upon recommendation of the head of the division or other unit to which

those officers or employees are to be assigned and in accordance with the State Personnel Act.

(8) To transfer employees from one division of the Department to another, either temporarily or permanently, when he determines that a transfer is necessary to expedite the work of the Department.

(9) To adopt, with the approval of the Governor, reasonable rules, regulations, and procedures concerning the organization, administration, and operation of the Department and the conduct of its relations and business with other agencies of the State and the United States.

(10) To have legal custody of all books, papers, documents, and other records of the Department.

(11) To make an annual report to the Governor for transmittal to the General Assembly and to provide him with any additional information that he may request at any time. (1969, c. 1145, s. 1.)

§ 143-323. Functions of Department.—(a) Recreation.—The Department of Local Affairs shall have the following powers and duties with respect to recreation:

(1) To study and appraise the recreation needs of the State and to assemble and disseminate information relative to recreation.

(2) To cooperate in the promotion and organization of local recreation systems for counties, municipalities, and other political subdivisions of the State, to aid them in the administration, finance, planning, personnel, coordination and cooperation of recreation organizations and programs.

(3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.

(4) To establish and promote recreation standards.

(5) To cooperate with appropriate State, federal, and local agencies and private membership groups and commercial recreation interests in the promotion of recreation opportunities, and to represent the State in recreation conferences, study groups, and other matters of recreation concern.

(6) To accept gifts, bequests, devises, and endowments. The funds, if given as an endowment, shall be invested in securities designated by the donor, or if there is no such designation, in securities in which the State sinking fund may be invested. All such gifts, bequests, and devises and all proceeds from such invested endowments shall be used for carrying out the purposes for which they were made.

(7) To advise agencies, departments, organizations and groups in the planning, application and use of federal and State funds which are assigned or administered by the State for recreation programs and services on land and water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.

(8) To act jointly, when advisable, with any other State, local or federal agency, institution, private individual or group in order to better carry out the Department's objectives and responsibilities.

(b) Law and Order.—The Department shall have the following powers and duties with respect to law and order:

(1) To assist and participate with State and local law-enforcement agencies, at their request, to improve law enforcement and the administration of criminal justice.

(2) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice.

(3) To encourage public support and respect for law and order.

(4) To seek ways to continue to make North Carolina a safe and secure State for its citizens.

(5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work.

(6) To make grants for use in pursuing its objectives, under such conditions as are deemed by the Department to be necessary.

(c) Local Planning Assistance.—The Department shall have the following powers and duties with respect to local planning assistance:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.

(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.

(6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) Federal Assistance.—The Department, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual, and may comply with the terms, conditions, and limitations of the grant, in order to accomplish any of the purposes of the Department. Grant funds shall be expended pursuant to the Executive Budget Act.

(e) General.—The Department shall have the following general powers and duties:

(1) To study and to sponsor research on all aspects of local government and of relationships between the federal government, the State and local governments in North Carolina.

(2) To collect, collate, analyze, publish, and disseminate information necessary for the effective operation of the Department and useful to local government.

(3) To maintain an inventory of data and information, and to act as a clearinghouse of information and as a referral agency with respect to State, federal, and private services and programs available to local government; and to facilitate local participation in those programs by fur-

nishing information, education, guidance, and technical assistance with respect to those programs.

(4) To assist in coordinating State and federal activities relating to local government.

(5) To assist local governments in the identification and solution of their problems.

(6) To assist local officials in bringing specific governmental problems to the attention of the appropriate State, federal, and private agencies.

(7) To advise and assist local governments with respect to intergovernmental contracts, joint service agreements, regional service arrangements, and other forms of intergovernmental cooperation.

(8) To inform and advise the Governor on the affairs and problems of local government and on the need for administrative and legislative action with respect to local government. (1969, c. 1145, s. 1.)

§ **143-324. Functions of Advisory Council.**—The Advisory Council on Local Affairs shall advise the Director of Local Affairs with respect to the problems and needs of local government and the work of the Department of Local Affairs. The Council may request the Director to conduct such studies of local governmental problems as it may deem advisable. (1969, c. 1145, s. 1.)

§ **143-325. Functions of committees.**—(a) Committee on Recreation.—The Committee on Recreation shall have power to develop and propose policies, programs, and activities in the field of recreation for approval by the Director as Department policies, programs, and activities.

(b) Committee on Law and Order.—The Committee on Law and Order shall have policy-making and supervisory authority over the policies, programs, and activities of the Department in the field of the administration of criminal justice in assisting and participating with State and local law-enforcement agencies, at their request, to improve law enforcement and the administration of criminal justice.

(c) The other committees and advisory agencies of the Department of Local Affairs shall advise the Director with respect to those policies, programs, and activities of the Department that are within their respective competencies. (1969, c. 1145, s. 1.)

§ **143-326. Transfer of functions, records, property, etc.**—(a) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the North Carolina Recreation Commission are transferred to the Department of Local Affairs, effective July 1, 1969. All statutory references to the "North Carolina Recreation Commission" or the "Recreation Commission" are amended to read "North Carolina Department of Local Affairs."

(b) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Governor's Committee on Law and Order are transferred to the Department of Local Affairs, effective July 1, 1969. All statutory references to the "Governor's Committee on Law and Order" are amended to read "North Carolina Department of Local Affairs."

(c) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Community Planning of the Department of Conservation and Development are transferred to the Department of Local Affairs, effective July 1, 1969.

(d) Such portion of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the State Planning Task Force Division of the Department of Administration as the Governor may designate is transferred to the Department of Local Affairs, effective July 1, 1969.

(e) The transfers directed by subsections (a) through (d), above shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences or disputes arising incident to those transfers.

(f) No transfer of functions to the Department of Local Affairs provided for in this article shall affect any action, suit, proceeding, prosecution, contract, lease, agreement, or other business transaction involving any of those functions that was initiated, undertaken, or entered into prior to or pending the time of the transfer, except that the Department shall be substituted for the agency from which the function was transferred, and as far as practicable the procedure provided for in this article shall be employed in completing or disposing of the matter. All rules, regulations, and policies of the agencies from which powers, duties, and functions are herein transferred to the Department of Local Affairs shall continue in force as rules, regulations, and policies of the Department of Local Affairs until altered pursuant to G.S. 143-320 (9) [§ 143-322 (9)]. (1969, c. 1145, s. 1.)

§ **143-327. Short title.**—This article may be cited as the Department of Local Affairs Act. (1969, c. 1145, s. 1.)

ARTICLE 36.

Department of Administration.

§ 143-334. Short title.

State Government Reorganization.—The Department of Administration was transferred by § 143A-82, enacted by Session Laws 1971, c. 864.

§ 143-335. Department of Administration created.

Cited in State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

§ **143-336. Definitions.**—As used in this Article:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

"Department" means the Department of Administration, unless the context otherwise requires.

"Director" means the Director of Administration, unless the context otherwise requires.

"Division" means a division of the Department of Administration, unless the context otherwise requires.

"Public buildings" means all buildings owned or maintained by the State in the city of Raleigh, but does not mean any building which a State agency other than the General Services Division is required by law to care for and maintain.

"Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the city of Raleigh, but does not mean any building or grounds which a State agency other than the General Services Division is required by law to care for and maintain.

"Public grounds" means all grounds owned or maintained by the State in the city of Raleigh, but does not mean any grounds which a State agency other than the General Services Division is required by law to care for and maintain.

"State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, and bridge structures.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 215, s. 2; c. 269, s. 1; 1963, c. 1, s. 6; 1971, c. 1097, s. 1.)

Editor's Note.—

The 1971 amendment transferred the definitions of "public buildings," "public buildings and grounds" and "public grounds" from § 129-2 to this section.

§ **143-337. Structure and organization of the Department.**

(b) There shall be a Budget Division and a Purchase and Contract Division in the Department. The Director, with the approval of the Governor, may, if he deems it necessary or convenient for the efficient performance of the duties and functions of the Department, establish within the Department additional divisions, including but not limited to an Architecture and Engineering Division, a Property Control and Disposition Division, an Administrative Analysis Division, and a State and Regional Planning Division. The Director, with the approval of the Governor, may abolish any division within the Department except the Budget Division and the Purchase and Contract Division if he deems such action necessary or convenient for the efficient performance of the duties and functions of the Department, and reassign the duties and functions of the abolished division to any other division, officer or employee of the Department.

(1969, c. 1144, s. 1.)

Editor's Note.—The 1969 amendment substituted "State and Regional" for "Long-Range" near the end of the second sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ **143-340. Powers and duties of Director.**—The Director of Administration has the following powers and duties:

(14) To establish a coordinated system for transmission of information by communications between the various agencies, departments and institutions of the State, local, and federal government, and to provide equipment, personnel and systems designed and operated in such manner as to achieve economical and effective transmission and receipt of information necessary to the duties and responsibilities imposed upon the various agencies of the State, including a network for transmission of information for use in the administration of criminal justice as administered by the Department of Justice.

(15) To administer the General Services Division.

(16) To employ, supervise, and control such subordinate officers and employees as are necessary for the efficient execution of the powers and duties of his office and those of the Division. The compensation of all persons employed by the Director shall be fixed in accordance with the State Personnel Act.

(17) To supervise the work of janitors appointed by the General Assembly to perform services in connection with the sessions of the General Assembly.

(18) To adopt reasonable rules and regulations with respect to the parking of automobiles on all public grounds, subject to the approval of the Governor and Council of State, and to enforce those rules and regulations. Any person who violates a rule or regulation concerning parking on public grounds is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.

(19) Any motor vehicle parked in a state-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto, in violation of the "Rules and Regulations Governing State-Owned Parking Lots" dated September 1968 or as amended, may be removed from such lot to a place of storage and the registered owner of such vehicle shall become

liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such lots pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid lot to place of storage.

(20) To use at all times such means as, in his opinion, may be effective in protecting all public buildings and grounds from fire.

(21) To serve as a special police officer and in that capacity to have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased or maintained by the State located in the County of Wake.

(22) To appoint as special police officers such reliable persons as he may deem necessary, and such officers shall have the same power of arrest as herein conferred upon the Director. Before the Director or the special police officers may exercise the power of arrest, they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(23) To perform all duties, exercise all powers, and assume and discharge all responsibilities vested by law in the Division, except as otherwise expressly provided by statute.

(24) To perform such additional duties as the Governor may direct. (1957, c. 215, s. 2; c. 269, s. 1; 1969, c. 627; c. 1267, s. 4; 1971, c. 280; c. 1097, s. 2.)

Editor's Note.—The 1969 amendment added subdivision (14).

Subdivisions (21) and (22), formerly subdivisions (6) and (7) of § 129-4, were rewritten by Session Laws 1971, c. 280.

Session Laws 1971, c. 1097, s. 2, added subdivisions (15) to (24) to this section. The new subdivisions were formerly subdivisions (1) to (9) of § 129-4.

As the rest of the section was not changed by the amendments, only the introductory clause and subdivisions (14) to (24) are set out.

§ 143-341. Powers and duties of Department.—The Department of Administration has the following powers and duties:

(6) State and regional planning:

a. To assist the Director of the Budget in reviewing the capital improvements needs and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.

b. In cooperation with State agencies and other public and private agencies, to collect, analyze, and keep up to date a comprehensive collection of economic and social data pertinent to State planning, which shall be available to State and local governmental agencies and private agencies.

c. To coordinate and review all planning activity relative to federal government requirements for general state-wide or regional comprehensive program planning.

d. To make economic analyses, studies, and projections and to advise the Governor on courses of action desirable for the maintenance of a sound economy.

e. To encourage and assist in the development of the planning process within State and local governmental agencies.

f. To assist State agencies by providing them with basic information and technical assistance needed in preparing their short-range and long-range programs.

g. To develop and maintain liaison and cooperative arrangements with federal, interstate, State, and private agencies and organizations in the interest of obtaining information and assistance with respect to State and regional planning.

h. To develop and maintain a comprehensive plan for the development of the State, representing the coordinated efforts and contributions of all participating planning groups.

i. In cooperation with the counties, the cities and towns, the federal government, multi-state commissions and private agencies and organizations, to develop a system of multi-county, regional planning districts to cover the entire State, and to assist in preparing for those districts comprehensive development plans coordinated with the comprehensive development plan for the State.

(7) Development programs:

a. To participate in development programs, to enter into contracts, formulate plans and to do all things necessary to implement development programs in any area of the State.

b. To accept, receive and disburse, in furtherance of its functions, any funds, grants and services made available by the federal government and its agencies, any county, municipality, private or civic sources.

(8) General services:

a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.

b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.

c. To provide necessary night watchmen for the public buildings and grounds.

d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.

e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.

f. Struck out by Session Laws 1959, c. 68, s. 3.

g. To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Director, to make application for and procure a post office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Director may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.

h. To provide necessary and adequate messenger service for the State agencies served by the Division. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.

i. To establish and operate a central motor pool and such subsidiary related facilities as the Director may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Director may deem necessary.
2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Division shall become part of a central motor pool. The Director of the Budget is authorized to transfer the appropriations, made to the several agencies for the purchase of passenger motor vehicles during the 1957-1959 biennium, to the Division for use in acquiring motor vehicles for the motor pool.
3. With the approval of the Governor, to require any State agency to transfer ownership, custody, and control of any or all passenger motor vehicles within the ownership, custody, or control of that agency to the General Services Division.
4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Division.
5. Upon proper requisition and proper showing of need for use upon State business only, to assign suitable transportation, either on a temporary or permanent basis, to any State agency.
6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.
7. To adopt, with the approval of the Governor and Council of State, reasonable rules and regulations for the efficient and economical operation, maintenance, repair, and replacement of all state-owned motor vehicles under the control of the Division, and to enforce those rules and regulations; and to adopt, with the approval of the Governor and Council of State, reasonable rules and regulations regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules and regulations. The Division, with the approval of the Governor and Council of State, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Division the duty of enforcing the rules and regulations adopted by the Division pursuant to this paragraph. Any person who violates a rule or regulation adopted by the Division and approved by the Governor and Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.
8. To require any State agency to keep such records and make such reports to the Director as the Director may require regarding motor vehicle use.

9. To acquire motor vehicle liability insurance on all state-owned motor vehicles under the control of the Division.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Director, of prison labor for use in connection with the operation of a central motor pool and related activities.

j. To establish and operate a central telephone system, central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Director may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules and regulations adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Director may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the General Services Division ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules, regulations, and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.

(9) Systems management: To establish and operate automated data processing centers to serve two or more State agencies on a cost-sharing basis, if the Council of State after appropriate investigation deems it advisable from the standpoint of efficiency and economy to establish such centers, and:

a. To allocate and charge against each State agency for which services are performed, on a time basis, its proportionate part of the cost of maintenance and operation of said center.

b. With approval of the Council of State, to require any State agency to be served to transfer to the automated data processing center ownership, custody, and/or control of automated data processing equipment, supplies, and positions no longer required by the served agency as a result of the use of said centers.

c. To adopt, with approval of the Council of State, reasonable rules and regulations for the efficient and economical operation of said automated data processing centers.

d. To adopt, with approval of the Council of State, policies, procedures, criteria, standards, plans, and rules and regulations for cooperative use of existing automated data processing equipment and personnel on a cost-reimbursable basis to facilitate more efficient and economic use of automated data processing resources whether located in the Department of Administration, in other State agencies, or in state-supported institutions.

Nothing in this section shall be construed to prescribe what agency programs to satisfy agency objectives, either existing or in the future, are to be undertaken; nor to remove from the control and administration of the agencies the responsibility for such program efforts whether such efforts are required specifically by statute or administered under the general program authority and responsibilities of the agencies.

e. To develop and promote training programs to upgrade the capability of technical and managerial personnel in automated data processing functions.

f. No data of a confidential nature, as defined in the General Statutes, shall be entered into or processed through any cost sharing data processing center, which may be established under this subdivision, until safeguards for their security satisfactory to the agency head and the Council of State have been designed and installed and are fully operational. No part of G.S. 143-341(9) in any way alters or affects the provisions of G.S. 147-58. (1957, c. 215, s. 2; c. 269, s. 1; 1959, c. 683, ss. 2-4; c. 1326; 1963, c. 1, s. 5; 1965, c. 1023; 1969, c. 1144, s. 2; 1971, c. 1097, s. 3.)

Editor's Note.—

The 1965 amendment added subdivision (7).

The 1969 amendment rewrote subdivision (6).

The 1971 amendment added subdivisions (8) and (9). New subdivision (8) was formerly subdivisions (1) to (13) of § 129-5.

Session Laws 1971, c. 1097, s. 5.1, provides: "This act shall not apply to the Police Information Network established under Chapter 114 of the General Statutes."

Only introductory paragraph and the subdivisions affected by the amendments are set out.

State Government Reorganization.—The General Services Division was transferred to the Department of Administration by § 143A-82, enacted by Session Laws 1971, c. 864.

No Carte Blanche to Condemn Property.—Where plaintiff argued that § 146-22 et seq. and subdivision (4) d of this section give Department (with the approval of the Governor and Council of State) carte blanche to condemn property, the Supreme Court held that the wording of the statutes, their legislative history, and the actualities of political and economic life make it clear that the General Assembly did no such thing. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Highway Rest Area Structure. — See opinion of Attorney General to Mr. John Davis, Chief Engineer, State Highway Commission, 3/4/70.

§ 143-343. Rules and regulations.—The Governor, with the approval of the Council of State, shall adopt reasonable rules and regulations governing the use, care, protection, and maintenance of the public buildings and grounds (other than parking). Any person who violates a rule or regulation adopted by the Governor with the approval of the Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court. (1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note. — This section was formerly § 129-6. It was transferred to its present position by Session Laws 1971, c. 1097, s. 4.

§ 143-344. Disorderly conduct in and injury to public buildings and grounds.—Any person who commits a nuisance or conducts himself in a disorderly manner in or around any public building or grounds, or defaces or injures any public building or grounds, is guilty of a misdemeanor and upon conviction is punishable in the discretion of the court. (1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note. — This section was formerly § 129-7. It was transferred to its present position by Session Laws 1971, c. 1097, s. 4.

§ 143-345. Construction and repair of public buildings; use of Contingency and Emergency Fund.—It is lawful to resort to the Contingency and Emergency Fund provided in the Appropriation Act for financial aid in the construction, alteration, renovation, or repair of any public building, when in the opinion of the Governor and Council of State it is necessary to construct, alter, renovate, or repair such building. (1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note. — This section was formerly § 129-8. It was transferred to its present position by Session Laws 1971, c. 1097, s. 4.

§ 143-345.1. Moore and Nash squares and other public lots. — The governing body of the City of Raleigh is authorized, at its own expense, to grade, to lay out in walks, to plant with trees, shrubbery, and flowers and otherwise to adorn Moore and Nash squares and to that end has the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots within the city limits which belong to the State and which are not otherwise appropriated, subject to the approval of the Governor and Council of State. The governing body may not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the Director, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the Director shall call the matter to the attention of the governing body, and if the governing body then fails for a period of 60 days to begin to take proper care of the squares or lots, the Governor and Council of State may repossess them and proceed to manage and control them for the preservation of such property.

In the event that the use of these squares and lots is at any time needed by the State, the license of the City of Raleigh to control and manage them shall terminate six months after notice given by the Governor and Council of State to the governing body of the city, and possession shall be promptly surrendered to the State. (1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note.—This section was formerly § 129-9. It was transferred to its present position by Session Laws 1971, c. 1097, s. 4.

§ 143-345.2. Program for location and construction of future public buildings.—The Department of Administration is hereby authorized, empowered, and directed to formulate a long range building policy program and shall cooperate with the governing board of the City of Raleigh in zoning property adjacent to or in the vicinity of the Capitol Square when and if the City of Raleigh desires to zone said property. If the Department of Administration is of opinion that property adjacent to or in the vicinity of the Capitol Square will, in the future, be needed for State building purposes, it shall so advise the governing body of the City of Raleigh. At such times as the governing body of the City of Raleigh shall rezone property adjacent to or within four blocks of the State Capitol, it shall request an opinion from the Department of Administration as to whether the Department finds a future need for such property for State building purposes. In the event that the governing board of the City of Raleigh is informed by the Department of Administration that any property herein covered be needed for building purposes by the State in the future, the governing body of the City of Raleigh shall give full consideration to such opinion of the Department before making any rezoning order. (1951, c. 1132; 1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note. — This section was formerly § 129-12. It was transferred to its present position by Session Laws 1971, c. 1097, s. 4.

ARTICLE 37.

Salt Marsh Mosquito Advisory Commission.

§ 143-346. Commission created; membership.

State Government Reorganization.—The Salt Marsh Mosquito Advisory Commission was transferred to the Department of Human Resources by § 143A-133, enacted by Session Laws 1971, c. 864.

ARTICLE 37A.

Marine Science Council.

§ 143-347.1. Council created.—There is hereby created and established in the Department of Administration a council to be known as the North Carolina Marine Science Council. (1971, c. 1191, s. 1.)

§ 143-347.2. Membership; terms; expenses.—The North Carolina Marine Science Council shall consist of a chairman and 20 members appointed by the Governor from the public and private academic and scientific institutions in the State and from the various industries and professions in the State concerned with the exploration and use of the sea. The chairman shall serve at the pleasure of the Governor, and each of the other members shall serve for six-year terms or until their successors are appointed and qualified; provided, however, that four of the first 20 members of the Commission shall be appointed for four-year terms and four for two-year terms. In addition, the State Planning Officer, the Director of the State Department of Conservation and Development, the State Health Officer, the State Property Officer, the Director of the State Department of Water and Air Resources, and the Director of the State Ports Authority, or their designees shall be ex officio members of the Council. The chairman and members of the Council shall serve without compensation for their services but shall be entitled to reimbursement for the actual and necessary expenses incurred in the performance of their official duties to the same extent as allowed other State officers. (1971, c. 1191, s. 2.)

§ 143-347.3. Rules of procedure; meetings; cooperation of other agencies.—The Council shall adopt its own rules of procedure and shall meet at such times and in such place as it may deem necessary to carry out its functions. The Council is authorized to secure directly from any executive department, agency, or independent instrumentality of the State government any information it deems necessary to carry out its functions. Each department, agency, and independent instrumentality is authorized to cooperate with the Council, and, to the extent permitted by law, to furnish such information to the Council, upon request made by the chairman. (1971, c. 1191, s. 3.)

§ 143-347.4. Duties and responsibilities.—The Council shall have the following duties and responsibilities:

(1) To encourage the use and study of the ocean, estuarine, and coastal waters of the State of North Carolina by the citizens and industries of the State;

(2) To foster education and training in ocean science and technology in the State of North Carolina, including extension and continuing education;

(3) To maintain liaison with corresponding authorities of nearby coastal states;

(4) To develop and maintain a continuing inventory of the ocean resources of the State of North Carolina and the industries and institutions that

have significant competence in the science and industry of the oceans, including their personnel and facilities;

(5) To coordinate efforts toward full development of the State's marine resources with proper attention being given to the need for conservation;

(6) To coordinate plans for, and work with relevant governmental agencies in, the implementation of all federal, State, and local legislation relating to coastal and marine resources;

(7) To review all research, education, and management programs relating to coastal and marine resources and to recommend revision when appropriate;

(8) To report annually on the last day of June to the Governor on all its activities undertaken in connection with the duties and responsibilities assigned in this section, together with any recommendations for new legislation designed to accomplish the purposes of this Article. (1971, c. 1191, s. 4.)

§ **143-347.5. Director of Department of Administration to furnish staff and financial support.**—The Director of the North Carolina Department of Administration shall furnish such staff and financial support to the Council as may be necessary to carry out its functions from funds appropriated or available for these purposes. (1971, c. 1191, s. 5.)

ARTICLE 38.

Department of Water Resources.

§§ **143-348, 143-349:** Repealed by Session Laws 1967, c. 892, s. 2.

Cross Reference.—For present provisions as to Department of Water and Air Resources, see § 143-211 et seq.

§ **143-350. Definitions.**—Definitions as used in this article:

"Board" means the Board of Water and Air Resources created by G.S. 143-214.

"Department" means the Department of Water and Air Resources created by G. S. 143-212. (1959, c. 779, s. 1; 1967, c. 892, s. 12.)

Editor's Note. — The 1967 amendment rewrote this section.

For article on "Introduction to Water Use Law in North Carolina," see 46 N.C.L. Rev. 1 (1967).

State Government Reorganization.—The Board of Water and Air Resources was transferred to the Department of Natural and Economic Resources by § 143A-120, enacted by Session Laws 1971, c. 864.

The Department of Water and Air Resources was transferred to the Department of Natural and Economic Resources by § 143A-119, enacted by Session Laws 1971, c. 864.

§ **143-351:** Repealed by Session Laws 1967, c. 892, s. 2.

§ **143-353:** Repealed by Session Laws 1967, c. 892, s. 2, effective July 1, 1967.

§ **143-354. Ordinary powers and duties of the Board.** — (a) Powers and Duties in General.—Except as otherwise specified in this article, the powers and duties of the Board shall be as follows:

(1) The Board shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State. It shall investigate the long-range needs of counties and municipalities and other local governments for water supply storage available in federal projects.

(2) The Board shall advise the Governor as to how the State's present water research activities might be coordinated.

(3) The Board, based on information available, shall notify any municipality or other governmental unit of potential water shortages or emergencies foreseen by the Board affecting the water supply of such municipality or unit together with the Board's recommendations for restricting and conserving the use of water or increasing the water supply by or in such municipality or unit. Failure reasonably to follow such recommendations shall make such municipality or other governmental unit ineligible to receive any emergency diversion of waters as hereinafter provided.

(4) The Board is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the Board.

(5) Recognizing the complexity and difficulties attendant upon the recommendation of the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Board shall solicit from the various water interests of the State their suggestions thereon.

(6) The Board may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.

(7) All recommendations for proposed legislation made by the Board shall be available to the public.

(8) The Board shall adopt such rules and regulations as may be necessary to carry out the purposes of this article.

(9) Any member of the Board or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered.

(10) The Board is authorized to provide to federal agencies the required assurances, subject to availability of appropriations by the General Assembly or applicable funds or assurances from local governments, of nonfederal cooperation for water supply storage and other congressionally-authorized purposes in federal projects.

(11) The Board is authorized to assign or transfer to any county or municipality or other local government having a need for water supply storage in federal projects any interest held by the State in such storage, upon the assumption of repayment obligation therefor, or compensation to the State, by such local government. The Board shall also have the authority to reassign or transfer interests in such storage held by local governments, if indicated by the investigation of needs made pursuant to subsection (a) (1) of this section, subject to equitable adjustment of financial responsibility.

(1967, c. 1071, ss. 1, 2.)

Cross References.—As to powers and duties of Board as to construction and abandonment of water wells, see §§ 87-83 to 87-96. As to powers and duties of Board with respect to protection of sand dunes along outer banks, see §§ 104B-3 to 104B-15. As to general and auxiliary powers of Board, see § 143-215.3. As to restrictions on authority of Board, see § 143-215.9. As to powers and duties of Board with respect to certain dams under the Dam Safety Law, see §§ 143-215.23 to 143-215.37.

Editor's Note. — The 1967 amendment added the second sentence of subdivision (1) of subsection (a) and added subdivisions (10) and (11) to such subsection.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Conservation and Development and of the Director of said Department.

(b) Functions to Be Performed.—It shall be the duty of the Department of Water Resources to perform the following functions:

(1) To request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control, shore-erosion prevention, and water-resources development for water supply, water quality control, and other purposes.

(2) To initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.

(3) To prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.

(4) To make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects; and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.

(5) To cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.

(6) To cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.

(7) To cooperate with federal and interstate agencies in planning and developing water-resource projects for navigation, flood control, hurricane protection, shore-erosion prevention, and other purposes.

(8) To provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.

(9) To discuss, with federal, State, and municipal officials and other interested persons, a program of development of rivers, harbors, and related resources.

(10) To make investigations and render reports requested by the Governor and the General Assembly.

(11) To participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State governments, the Conservation Foundation, and other national agencies concerned with conservation and development of water resources

(12) To prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.

(13) To formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.

(14) To include in the biennial budget the cost of performing the additional functions indicated above.

(15) To initiate, plan, study, and execute a long range flood plain management program for the promotion of health, safety, and welfare of the public. In carrying out the purposes of this subsection, the primary responsibility of flood plain management rests with the local levels of government and it is, therefore, the policy of this State and of this Department to provide guidance, coordination, and other means of assistance, along with the other agencies of this State and with the local levels of government, to effectuate adequate flood plain management programs.

This Department is directed to pursue an active educational program of flood plain management measures, to include in each biennial report a statement of flood damages, location where flood plain management is desirable, and suggested legislation, if deemed desirable, and within its capacities to provide advice and assistance to State agencies and local levels of government.

(e) Registration with Department of Water Resources Required; Registration Periods.—Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this State, shall register annually with the North Carolina Department of Water Resources on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year.

(f) Samples of Cuttings to Be Furnished the Department of Water Resources When Requested.—Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department of Water Resources samples of cuttings from such depths as the Department may require from all wells constructed by such person, firm or corporation, when such samples are requested by the Department. The Department shall bear the expense of delivering such samples. The Department shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed; the Department shall not report the results of any such analysis to any other person whatsoever until the person legally authorized to do so authorizes in writing the release of the results of the analysis.

(g) Reports of Each Well Required.—Every person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, within 30 days of the completion of each well, report to the Department of Water Resources on forms furnished by the Department the location, size, depth, number of feet of casing used, method of finishing, and formation log information of each such well. In addition such person, firm or corporation shall report any tests made of each such well including the method of testing, length of test, draw-down in feet and yield in gallons per minute. The person, firm or corporation making such report to the Department of Water Resources shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(k) Water Use Information.—Any person using, withdrawing, diverting or obtaining water from surface streams, lakes and underground water sources shall, upon the request of the Department, file a monthly report with the Department of Water Resources showing the amount of water used, withdrawn, diverted or obtained from such sources. Such report shall be on a form supplied by the Department and shall show the identification of the water well or other withdrawal facility, location, withdrawal rate (measured in gallons per minute), and total gallons withdrawn during the month. Reports required to be filed under this subsection shall be filed on or before the fifteenth day of the month succeeding the month during which the using, withdrawing, diverting or obtaining water required to be reported occurred. Provided, however, this provision does not include use for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department of Water Resources. (1959, c. 779, s. 3; 1961, c. 315; 1967, c. 1069, ss. 1-3; c. 1070, s. 1; c. 1071, ss. 3, 4; c. 1117, s. 1.)

Editor's Note.—

The first 1967 amendment, effective Jan. 1, 1968, deleted "July 1 to July 31 or during the period from" near the end of the second sentence of subsection (e), rewrote subsection (f), and rewrote subsection (g). Section 5 of the amendatory act provides that the act shall not repeal any other laws relating to the reporting of test drillings or borings on public or state-owned lands.

The second 1967 amendment added subdivision (15) and the second paragraph to subsection (b).

The third 1967 amendment added the provisions for water resources development for water supply, water quality control, and other purposes to subdivision (1) of subsection (b) and rewrote subdivision (7) of that subsection.

The fourth 1967 amendment added subsection (k) at the end of the section. Section 2 of the amendatory act provides that the authority given is in addition and supplemental to all other authority relating to the reporting of water use information.

As the rest of the section was not affected by the amendments, it is not set out.

ARTICLE 39.

U.S.S. North Carolina Battleship Commission.

§ 143-360. Title.

State Government Reorganization.—The U.S.S. North Carolina Battleship Commission was transferred to the Department of Art, Culture and History by § 143A-204, enacted by Session Laws 1971, c. 864.

ARTICLE 39A.

Frying Pan Lightship Marine Museum Commission.

§ 143-369.1. Commission created; members; appointment; terms; vacancies; chairman.—There is hereby created, effective July 1, 1967, a Commission to be designated as the Frying Pan Lightship Marine Museum Commission. This Commission shall be composed of seven members who shall be residents of this State. Five members of the Commission shall be appointed by the Board of Aldermen of the city of Southport, two for a term of one year, two for terms of two years, and one for a term of three years, and their successors shall each be appointed for terms of three years. Two members shall be appointed by the Governor, one for a term of two years, and one for a term of three years, and their successors shall be appointed for terms of three years. Vacancies arising from any cause other than expiration of a term of office shall be filled by appointment for the unexpired term by the same appointing authority who appointed the member causing the vacancy. The Commission shall select a chairman from its own membership. (1967, c. 1216, s. 1.)

State Government Reorganization.—The Frying Pan Lightship Marine Museum Commission was transferred to the Department of Art, Culture and History by § 143A-221, enacted by Session Laws 1971, c. 864.

§ 143-369.2. Conveyance of "Frying Pan" lightship to Commission.—The governing body of the city of Southport is hereby authorized, in its discretion, to convey the "Frying Pan" lightship to said Commission upon such terms and conditions as it may deem wise and expedient. (1967, c. 1216, s. 2.)

§ 143-369.3. Powers of Commission.—If and when the above-described lightship is transferred or conveyed to the Commission. such Commission shall have full power and authority to operate the lightship as a museum to be designated as the Frying Pan Lightship Marine Museum. Said Commission shall have full authority and power to do all acts necessary to carry out the provisions of this article and may accept donations and charge admissions which funds may be expended in promoting the purposes of this article. Such Commission shall have no authority to incur any indebtedness on the part of the city of Southport or otherwise obligate the city of Southport in any manner not specifically authorized by the governing body of said city. (1967, c. 1216, s. 3.)

ARTICLE 40.

Advisory Commission for State Museum of Natural History.

§ 143-370. Commission created; membership.

State Government Reorganization.—The Museum of Natural History Advisory Commission was transferred to the Department of Agriculture by § 143A-66, enacted by Session Laws 1971, c. 864.

ARTICLE 41.

Science and Technology Research Center.

§ 143-374. Creation of Center.—There is hereby created the "North Carolina Science and Technology Research Center" at the Research Triangle. (1963, c. 846, s. 1; 1967, c. 69.)

Editor's Note. — The 1967 amendment substituted "North Carolina Science and Technology Research Center" for "North Carolina Space and Technology Research Center."

§ 143-375. Administration by Board of Science and Technology.—The activities of the North Carolina Science and Technology Research Center will be administered by the North Carolina Board of Science and Technology. (1963, c. 846, s. 2; 1967, c. 69.)

Editor's Note.—The 1967 amendment substituted "North Carolina Science and Technology Research Center" for "North Carolina Space and Technology Research Center" and "North Carolina Board of Science and Technology" for "North Carolina Board of Space and Technology."

§ 143-376. Acceptance of funds. — The North Carolina Science and Technology Research Center is authorized and empowered to accept funds from private sources and from governmental and institutional agencies to be used for construction, operation and maintenance of the Center. (1963, c. 846, s. 4; 1967, c. 69.)

Editor's Note.—The 1967 amendment substituted "North Carolina Science and Technology Research Center" for "North Carolina Space and Technology Research Center."

§ 143-377. Applicability of Executive Budget Act.—The North Carolina Science and Technology Research Center is subject to the provisions of article 1, chapter 143, of the General Statutes of North Carolina. (1963, c. 846, s. 5; 1967, c. 69.)

Editor's Note. — The 1967 amendment substituted "North Carolina Science and Technology Research Center" for "North Carolina Space and Technology Research Center."

ARTICLE 42.

Board of Science and Technology

§ 143-378. Creation; purpose.—There is hereby created the North Carolina Board of Science and Technology herein referred to as "the Board." The purpose of the Board shall be, through the exercise of its powers and performance of the duties set forth in this article, to encourage, promote, and support the scientific, engineering, and industrial research and applications in North Carolina to the end that the State will benefit from, and contribute to, economic and technical developments resulting from advances in the space and related sciences. (1963, c. 1006, s. 1; 1967, c. 69.)

Editor's Note.—The 1967 amendment substituted "North Carolina Board of Science and Technology" for "North Carolina Board of Space and Technology."

State Government Reorganization.—The Board of Science and Technology was transferred to the Department of Natural and Economic Resources by § 143A-112, enacted by Session Laws 1971, c. 864.

ARTICLE 43.

North Carolina Seashore Commission.

§§ 143-384 to 143-391: Repealed by Session Laws 1969, c. 1143, s. 1, effective July 1, 1969.

Cross Reference.—As to transfer of the records, property, etc., of the Seashore Commission to the Department of Conservation and Development, see Editor's note under § 113-14.1.

ARTICLE 44.

North Carolina Traffic Safety Authority.

§ 143-392. Authority created; members.—There is hereby created the North Carolina Traffic Safety Authority, hereinafter called the Authority, which shall be composed of the following officials: The Governor, who shall be chairman, the Commissioners of Agriculture, Insurance, Labor, and Motor Vehicles, the chairman of the State Highway Commission, the Superintendent of Public Instruction, the State Health Director, the Attorney General, the chairman of the Industrial and Utilities Commissions, the President of the North Carolina Traffic Safety Council, Inc., and one member each from the Senate and House of Representatives to be appointed by the presiding officers thereof. (1965, c. 541, s. 1.)

State Government Reorganization.—The Traffic Safety Authority was transferred to the Department of Transportation and Highway Safety by § 143A-102, enacted by Session Laws 1971, c. 864.

§ 143-393. Duties.—It shall be the duty of the Authority to undertake a thorough and objective analysis of the State's traffic problem, make an inventory and appraisal of what is currently being done by each official agency, survey available resources and facilities, and determine what additional programs need to be instituted or what existing programs need to be improved. On the basis of its studies, a written statement of agreed upon needs shall be developed and priorities established. Said written statement of needs shall be periodically updated and submitted to the chairman as deemed advisable but at least once each year in the month of January. (1965, c. 541, s. 2.)

§ 143-394. Meetings.—The Authority shall meet at the call of the chairman but not less than once every three months. (1965, c. 541, s. 3.)

§ 143-395. Authority not to exercise powers or duties of other departments or agencies.—The Authority shall exercise no powers or duties now vested in any other department or agency of State government except as provided in this article. (1965, c. 541, s. 4.)

ARTICLE 45.

North Carolina American Revolution Bicentennial Commission.

§ **143-396. Commission established; members, terms, vacancies, etc.**—There is hereby established the North Carolina American Revolution Bicentennial Commission, which shall consist ex officio of the Director of the Department of Archives and History; the Director of the Department of Conservation and Development; the Superintendent of Public Instruction; the heads of the history departments (or equivalent departments) of the University of North Carolina at Chapel Hill, North Carolina State University, North Carolina College at Durham, East Carolina College, Western Carolina College, Appalachian State Teachers College, Wake Forest College, Duke University, and Davidson College; the State Regent of the Daughters of the American Revolution; and ten members to be appointed by the Governor, two for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years, and two for a term of five years, and as the terms of each group expire, their successors shall be appointed for full five-year terms. The Governor is authorized to fill any vacancies in the terms of any of the appointed members. Each ex officio member may appoint a deputy who shall be fully empowered to represent him on the Commission (1967, c. 70, s. 1.)

State Government Reorganization.—The American Revolution Bicentennial Commission was transferred to the Department of Art, Culture and History by § 143A-208, enacted by Session Laws 1971, c. 864.

§ **143-397. Duties.** — The Commission shall make plans and develop programs for the celebration of the bicentennial of the American Revolution, and at the appropriate time or times shall conduct such celebration or series of celebrations. (1967, c. 70, s. 2.)

§ **143-398. Travel and subsistence expenses.**—The members of the Commission shall serve without pay, but they shall be allowed, in attending to their official duties, their actual travel and subsistence expenses. (1967, c. 70, s. 3.)

§ **143-399. Allotments from Contingency and Emergency Fund.**—In order to meet the expenses of the aforesaid Commission in attending to their official duties, in employing necessary personnel, and in meeting other necessary expenses, allotments may be made from the Contingency and Emergency Fund at such times and in such amounts as may be approved by the Governor and Council of State. (1967, c. 70, s. 4.)

ARTICLE 46.

Governor's Committee on Law and Order.

§§ **143-400 to 143-402.2**: Repealed by Session Laws 1969, c. 1145, s. 4, effective July 1, 1969.

Cross Reference.—As to transfer of functions, property, etc., of the Governor's Committee on Law and Order to the Department of Local Affairs, see § 143-326.

Editor's Note.—Former §§ 143-400 to 143-402, relating to the Governor's Committee on Law and Order, were added by Session Laws 1967, c. 65, and amended by Session Laws 1969, c. 57. Former §§ 143-402.1 and 143-402.2, relating to the executive director, staff and consultants of the Committee, were added by Session Laws 1969, c. 57.

ARTICLE 47.

North Carolina Arts Council.

§ **143-403. Council created; appointment of members.** — There is hereby created in the Department of Administration the North Carolina Arts

Council. The term "arts" includes, but is not limited to: Music, dance, drama, creative writing, architecture and allied fields, painting, sculpture, photography, crafts, television, radio, and the execution and exhibition of such major art forms. The Council shall consist of 24 members, to be appointed by the Governor from among the citizens of North Carolina.

The Governor shall appoint the chairman, upon nomination by the Council. The Council may elect other officers as deemed necessary. (1967, c. 164, s. 1.)

State Government Reorganization.—The Arts Council was transferred to the Department of Art, Culture and History by § 143A-203, enacted by Session Laws 1971, c. 864.

§ 143-404. Terms of office; vacancies; compensation; meetings; Council placed within Department of Administration.—The term of office of each member shall be three years, provided, however, that of the members first appointed, eight shall be appointed for terms of one year, eight for terms of two years, and eight for terms of three years. Vacancies shall be filled for the unexpired term in the same manner as the original appointment. Membership on the Council shall be limited to two successive terms: Provided, a member may be reappointed after one year has elapsed since the end of the second term.

Members shall be entitled to reimbursement for authorized expenses incurred in the work of the Council, as provided for members of boards and committees under the general laws of the State.

The Council shall meet annually, or more often on the call of the chairman.

The Council is placed within the Department of Administration for administrative purposes. (1967, c. 164, s. 2.)

§ 143-405. Executive director and other personnel. — The Council shall appoint, in accordance with the State Personnel Act, an executive director who shall serve at the will of the Council. The executive director of the Council shall select and appoint, in accordance with the State Personnel Act, such other personnel as the Council shall determine to be necessary. The executive director shall employ on a contractual basis such other consultants and/or staff persons as the Council deems necessary, within funds allocated for such purposes. (1967, c. 164, s. 3.)

§ 143-406. Duties of Council.—The Council, through its executive director, staff and members shall take action to carry out the following purposes as funds and staff permit:

(1) Study, collect, maintain, and otherwise disseminate factual data and pertinent information relative to the arts;
(2) Assist local organizations and the community at large with needs, resources and opportunities in the arts;
(3) Serve as an agency through which various public and nonpublic organizations concerned with the arts can exchange information, coordinate programs and stimulate joint endeavors;
(4) Identify research needs, encourage research and assist in obtaining funds for research;
(5) Assist in bringing the highest obtainable quality in the arts to the State; promote the maximum opportunity for the people to experience, enjoy, and profit from those arts.

The Council shall, in addition to such other recommendations, studies and plans as it may submit from time to time, submit a biennial report of progress to the Governor, and thus, to the General Assembly. (1967, c. 164, s. 4.)

§ 143-407. Appropriations; funds.—In addition to the appropriations out of the general fund of the State, the Council may accept gifts, bequests, devises, matching funds, or other considerations for use in promoting the work of the Council. (1967, c. 164, s. 5.)

§ 143-408. Appointees holding office, etc., under United States or State government.—Any person appointed to the Council who holds any office, place of trust or profit under the United States or North Carolina government, shall serve on the Council ex officio and shall perform their duties on the Council in addition to their regular duties imposed by law. (1967, c. 164, s. 6.)

ARTICLE 48.

Executive Mansion Fine Arts Commission.

§ 143-409. Commission created; appointment and terms of members; vacancies; chairman; ex officio members.—There is hereby created the Executive Mansion Fine Arts Commission, consisting of sixteen members, who shall be appointed by the Governor on or before July 1, 1967, for terms as follows: Four members for one year; four members for two years; four members for three years; and four members for four years. At the expiration of the foregoing terms, all members shall be appointed for terms of four years. The term of each member shall commence on July 1 of the year in which appointed, and each member shall serve until his successor is appointed and qualified. Any vacancy occurring for reasons other than expiration of the term shall be filled by the Governor for the unexpired term. The Governor shall appoint the chairman of the Commission.

Any public officer appointed to the Commission shall serve ex officio in addition to his duties imposed by law. (1967, c. 273, s. 1.)

State Government Reorganization.—The Executive Mansion Fine Arts Commission was transferred to the Department of Art, Culture and History by § 143A-207, enacted by Session Laws 1971, c. 864.

§ 143-410. Purpose.—The purpose of the Commission shall be:

(1) To preserve and maintain the Executive Mansion, located at 200 North Blount Street, Raleigh, North Carolina, as a structure having historical significance and value to the State of North Carolina;

(2) To improve the furnishings of the Executive Mansion by encouraging gifts and objects of art, furniture and articles which may have historical value, and to approve major changes in the furnishings of the Mansion;

(3) To recommend to the Department of Administration any major renovations to the Executive Mansion which the Commission deems necessary to preserve and maintain the structure;

(4) To keep a complete list of all gifts and articles received, together with their history and value and to request the assistance of the State Department of Archives and History for this purpose; and

(5) To publicize work of the Commission. (1967, c. 273, s. 2.)

§ 143-411. Powers. — The Commission is hereby empowered on behalf of the State of North Carolina to receive gifts, contributions of money and objects of art consistent with the purpose for which the Commission is created. Title to all gifts, articles and monies received by the Commission shall be vested in the State of North Carolina and shall remain in the custody and control of the Commission. The Commission is authorized to accept loans of furniture and other objects as, in its discretion, it deems suitable. The Commission is empowered to employ clerical assistance on such basis as it may deem reasonable Provided, however, that the salary of such person shall be paid out of funds the Commission has received in the conduct of its work, and it is specifically provided that no other funds belonging to the State of North Carolina shall be used for this purpose. The Commission shall be empowered to expend such funds as it may receive, under this article, in such manner as it deems appropriate and consistent with the purposes set forth herein. The Commission shall keep an account of receipts and expenditures and the State Auditor shall, at least annually, make a complete audit of the books and records of the Commission and report the result of his audit to the Governor. The Commission may do all things necessary and proper to achieve the purposes set forth in this article. (1967, c. 273, s. 3.)

§ 143-412. Compensation.—Members of the Commission shall not receive any per diem, travel or expense allowance or any compensation from any State funds whatsoever, except, in the discretion of the Commission, from those funds received by the Commission under § 143-411. (1967, c. 273, s. 4.)

§ 143-413. Duty of Director of State Department of Archives and History.—The Director of the State Department of Archives and History is directed to provide such reasonable assistance as he may be requested by the Commission to render for the purposes of carrying out the provisions of subdivision (4) of § 143-410. (1967, c. 273, s. 5.)

§ 143-414. Unexpended funds and assets.—All unexpended funds and assets of the existing Executive Mansion Fine Arts Committee shall be transferred immediately to the Executive Mansion Fine Arts Commission. (1967, c. 273, s. 6.)

§ 143-415. Authority, etc., of Department of Administration not affected.—This article shall not be construed as divesting the Department of Administration of any powers, duties and authority relating to the budget or the operation and maintenance of the Executive Mansion. (1967, c. 273, s. 7.)

ARTICLE 49.

North Carolina Human Relations Commission.

§ 143-416. North Carolina Human Relations Commission created; membership; chairman and vice-chairman.—There is hereby created the North Carolina Human Relations Commission, which shall be composed of a chairman, a vice-chairman, and 18 members, all appointed by the Governor. The Commission, for administrative and budget purposes, shall be a part of the Department of Administration. The chairman, vice-chairman and all members shall serve at the pleasure of the Governor.

Any public officer appointed to the Commission shall serve ex officio, in addition to his regular duties imposed by law. (1967, c. 992, s. 1; 1971, c. 674.)

Editor's Note.—Section 9, c. 992, Session Laws 1967, provides that the act shall be effective from and after July 1, 1967.

The 1971 amendment substituted "Human Relations Commission" for "Good Neighbor Council" in the first sentence of the first paragraph and "Commission" for "Council" in the second sentence of the first paragraph and in the second paragraph.

State Government Reorganization.—The North Carolina Human Relations Commission was transferred to the Department of Administration by § 143A-90, enacted by Session Laws 1971, c. 864.

§ 143-417. Duties of Commission.—It shall be the duty of the Commission:

(1) To study problems in the area of human relations;
(2) To promote equality of opportunity for all citizens;
(3) To promote understanding, respect, and goodwill among all citizens;
(4) To provide channels of communication among the races;
(5) To encourage the employment of qualified people without regard to race;
(6) To encourage youth to become better trained and qualified for employment;
(7) To receive and expend gifts and grants from public and private donors;
(8) To enlist the cooperation and assistance of all State and local governmental officials in the attainment of the objectives of the Commission;

(9) To assist local good neighbor councils and biracial, human relations committees in promoting activities related to the functions of the Commission enumerated above; and

(10) To make a biennial report of its activities to the Governor and the General Assembly. (1967, c. 992, s. 2; 1971, c. 674.)

Editor's Note.—The 1971 amendment substituted "Commission" for "Council" in three places in the section.

§ **143-418. Director.**—(a) The Director of the North Carolina Human Relations Commission shall be appointed by and serve at the pleasure of the Governor.

(b) The Director shall be the executive officer of the Commission and shall execute all orders, rules, and regulations adopted by the Commission. He shall, with the approval of the Governor, appoint, promote, demote, discharge, and prescribe the duties of all employees of the Commission. (1967, c. 992, s. 3; 1969, c. 357, s. 1; 1971, c. 674.)

Editor's Note. — The 1969 amendment rewrote this section, which formerly related to the duties of the chairman.

The 1971 amendment substituted "Human Relations Commission" for "Good Neighbor Council" in subsection (a) and "Commission" for "Council" in three places in subsection (b).

§ **143-419. Headquarters; meetings; other officers.**—(a) The headquarters and main offices of the Commission shall be located in Raleigh.

(b) The Commission shall meet once each 90 days at such time and place as the Commission or chairman may prescribe. The Commission may also hold special meetings at any time or place within the State on the call of the chairman or the Governor. One half of the membership of the Commission shall constitute a quorum for conduct of official business of the Commission. The chairman and vice-chairman shall be counted as members for the purpose of determining a quorum.

(c) The Commission shall select a recording secretary from among its membership. The secretary shall be responsible for keeping the minutes of all meetings, and the minutes shall at all times be open to public inspection.

(d) The chairman and vice-chairman may appoint an executive committee and other necessary officers, subject to the approval of the Governor. (1967, c. 992, s. 4; 1971, c. 674.)

Editor's Note. — The 1971 amendment substituted "Commission" for "Council" throughout the section.

§ **143-420. Salaries; allowances.**—(a) The salary of the Director shall be fixed by the Governor with the approval of the Advisory Budget Commission. The salaries of all other personnel of the Commission shall be fixed pursuant to the State Personnel Act.

(b) The chairman, vice-chairman, and members of the Commission shall receive while engaged in the performance of their duties the subsistence and travel allowances established by G.S. 138-5 for members of State boards and commissions generally. (1967, c. 992, s. 5; 1969, c. 357, s. 2; 1971, c. 674.)

Editor's Note. — The 1969 amendment substituted "Director" for "chairman" and "with" for "subject to" in the first sentence of subsection (a) and rewrote subsection (b).

The 1971 amendment substituted "Commission" for "Council" in the second sentence of subsection (a) and near the beginning of subsection (b).

§ **143-421. Advisory committee.**—The Governor may appoint an advisory committee to the Commission. The members of the advisory committee shall serve at the pleasure of the Governor and shall receive no compensation. (1967, c. 992, s. 6; 1971, c. 674.)

Editor's Note. — The 1971 amendment substituted "Commission" for "Council" at the end of the first sentence.

§ **143-422. Transfer of funds and property.**—All unexpended appropriations made to and other assets of the organization formed by executive order of the Governor and known as the North Carolina Human Relations Commission are hereby transferred to the Department of Administration for the use of the North Carolina Human Relations Commission as herein created. All records, files, publications and other papers belonging to the North Carolina Human Relations Commission shall become the records, files, publications, and papers of the North Carolina Human Relations Commission as herein created. (1967, c. 992, s. 7; 1971, c. 674.)

Editor's Note. — The 1971 amendment substituted "Human Relations Commission" for "Good Neighbor Council" throughout the section.

ARTICLE 50.

Commission on the Education and Employment of Women.

§ **143-423. Declaration of policy.**—It is hereby declared to be the policy of the State of North Carolina to develop the most efficient utilization of the skills of all its citizens. To this end, it is appropriate that the State make provision for the continuing review of the education and employment of women in North Carolina in relation to current needs. (1967, c. 1027, s. 1.)

State Government Reorganization.—The Commission on Education and Employment of Women was transferred to the Department of Administration by § 143A-96, enacted by Session Laws 1971, c. 864.

§ **143-424. Commission continued; composition; appointment and terms of members.**—The North Carolina Commission on the Education and Employment of Women, hereinafter called the Commission, shall continue its study, composed of seven members, all appointed by the Governor, with a wide range of interests. Four members shall be appointed for an initial term of one year, three members shall be appointed for an initial term of two years, all shall be appointed for two-year terms thereafter. (1967, c. 1027, s. 2.)

§ **143-425. Officers; rules and regulations; quorum.**—The Commission shall elect a chairman and a vice-chairman from among its members and adopt its own rules and regulations. A majority of its members shall constitute a quorum. (1967, c. 1027, s. 3.)

§ **143-426. Duties generally.** — The Commission shall meet, study, plan and advise with the Governor, the departments of the State, and the State legislature and shall make such recommendations as it deems proper concerning the education and employment of women in the State of North Carolina. (1967, c. 1027, s. 4.)

§ **143-427. Reports to General Assembly.**—The Commission shall report its findings and recommendations to each session of the General Assembly. (1967, c. 1027, s. 5.)

§ **143-428. Members to serve without compensation; subsistence and travel expenses.**—Members of the Commission shall serve without compensation but they shall be paid the same subsistence and travel expenses as other State boards and commissions while engaged in the official performance of their duties, to be paid from funds appropriated for the expenses of the Commission. (1967, c. 1027, s. 6; 1969, c. 1137.)

Editor's Note. — The 1969 amendment substituted "to be paid from funds appropriated for the expenses of the Commission" for a provision that the allowance should be paid out of the State Contingency and Emergency Fund and setting a limit of $3,000 upon the total expenditure from that fund in any one year.

ARTICLE 51.

Tobacco Museum Board.

§ **143-429. Tobacco Museum Board created.**—There is hereby created the Tobacco Museum Board, an agency of the State, composed of eighteen members. The Director of the Department of Conservation and Development and the Director of the Department of Archives and History shall be ex officio members of the Board. The initial members of the Board shall be appointed by and serve for terms as follows: Three members shall be selected by the Rockingham County historical society, two of whom shall serve for terms of two years, and one of whom shall serve for the term of one year. Three members shall be selected by the Nash and Edgecombe County historical societies, two of whom shall serve for the term of one year and one of whom shall serve for the term of two years. Four members shall be appointed by the Lieutenant Governor, two of whom shall serve for terms of one year and two of whom shall serve for terms of two years. Four members shall be appointed by the Speaker of the House of Representatives, two of whom shall serve for terms of one year and two of whom shall serve for terms of two years. Two members shall be appointed by the Governor, one of whom shall serve for one year and one of whom shall serve for two years. After the terms of the initial members of the Board expire, all members of the Board shall serve for terms of two years. Members of the Board shall be eligible to serve for successive terms and shall serve without pay and without expense allowance. (1969, c. 840, s. 1.)

Editor's Note. — Session Laws 1969, c. 840, s. 6, makes the act effective July 1, 1969.

State Government Reorganization.—The Tobacco Museum Board was transferred to the Department of Art, Culture and History by § 143A-210, enacted by Session Laws 1971, c. 864.

§ **143-430. Officers; quorum.**—The Board shall select its own chairman and vice-chairman who shall serve for terms of one year. A quorum for any meeting of the Board shall be nine members. (1969, c. 840, s. 2.)

§ **143-431. Tobacco museums.**—It shall be the duty of the Board to establish, supervise, manage and maintain the tobacco museums. The Board may establish a reasonable fee for viewing the museums which fees shall be used to defray the expenses of the museums. To accomplish these purposes, the Board shall have authority to buy and sell real and personal property and to accept donations of real or personal property from any source. The Board shall not contract any debt in its purchase of real or personal property. (1969, c. 840, s. 3.)

§ **143-432. Location of museums.**—One of the tobacco museums shall be located within Rockingham County at a site to be determined by the Board, and shall emphasize the history and development of tobacco manufacturing. One of the tobacco museums shall be located in Nash or Edgecombe counties at a site to be determined by the Board and shall emphasize the history and development of growing and marketing of tobacco. (1969, c. 840, s. 4.)

ARTICLE 51A.

Tax Study Commission.

§ **143-433. Tax Study Commission created.**—There is hereby created a commission to be known as the Tax Study Commission for the study of the revenue structure of the State, to be composed of 11 members and who shall be appointed biennially as follows: Five members shall be appointed by the Governor, three members shall be appointed by the President of the Senate and three members shall be appointed by the Speaker of the House. The term of each member shall commence on July 1 of the year in which appointed, and each member shall serve until his successor is appointed and qualified. Any public officer appointed to the Commission shall serve ex officio in addition to his duties imposed by law. (1971, c. 1219, s. 1.)

Editor's Note. — Session Laws 1971, c 1219, s. 2, makes this Article effective on July 1, 1973.

§ **143-433.1. Duties of Commission.**—It shall be the duty of the Commission to study and review the tax laws of the State, both State and local laws, and to recommend such changes as it may deem advisable in the rates of taxation, together with the predicted revenue effects thereof, and with proposed alternate sources of revenue, to the end that the revenue system may be as stable and equitable as possible, and yet so fair when compared with the tax structures of other states that business enterprises and persons will be encouraged to locate and expand business in North Carolina. (1971, c. 1219, s. 1.)

§ **143-433.2. Organization of Commission.**—Upon its appointment, the Commission shall organize by electing from its membership a chairman and a vice-chairman. The Director of Tax Research shall serve as secretary to the Commission, but shall not be a member. The Commission is authorized, with the approval of the Governor, to employ such clerical and other assistance, professional advice and services as may be deemed necessary in the performance of its duties. (1971, c. 1219, s. 1.)

§ **143-433.3. Members to serve without compensation; subsistence and travel expenses.**—Members of the Commission shall serve without compensation but they shall be paid such per diem and travel expenses as are provided for members of State boards and commissions generally. The expenses of the Commission shall be paid from the Contingency and Emergency Fund, but the total of such expenses of the Commission shall not exceed the sum of fifty thousand dollars ($50,000) per year. (1971, c. 1219, s. 1.)

§ **143-433.4. Assistance to the Commission.** — The Commissioner of Revenue and the Director of Tax Research shall make themselves and their staffs available to the Commission, and the tax supervisors of the various counties shall render any assistance and service requested by the Commission. (1971. c. 1219, s. 1.)

§ **143-433.5. Reports to Governor and General Assembly.**—The Commission shall submit its report by September 1, 1974, and biennially thereafter, to the Governor for transmittal to the Advisory Budget Commission and to the next succeeding General Assembly. (1971, c. 1219, s. 1.)

Article 52.

Pesticides Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ **143-434. Short title.**—This Article may be cited as the North Carolina Pesticide Law of 1971. (1971, c. 832, s. 1.)

Editor's Note. — Under Session Laws 1971, c. 832, s. 9, Part 1 of this Article is effective October 1, 1971; Part 2 is effective October 1, 1971, with the exception of §§ 143-442 to 143-445, which are effective January 1, 1972; Parts 3 and 4 are effective January 1, 1972; and Part 5 is effective October 1, 1971.

Session Laws 1971, c. 832, ss. 5 to 7 provide:

"Sec. 5. This act shall not be deemed to repeal the Structural Pest Control Act of North Carolina of 1955, as amended (G.S. Chapter 106, Article 4C).

"Sec. 6. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

"(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act;

"(b) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law so repealed.

"Sec. 7. (a) Notwithstanding any other provision of law, all existing rules and regulations concerning pesticides of the North Carolina Department of Agriculture and of any other department or agency of the State of North Carolina, not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified or amended.

"(b) No action or proceeding of any nature concerning pesticides (whether civil or criminal, judicial or administrative or otherwise) pending at the effective date of this act by or against or before the North Carolina Department of Agriculture or any other department or agency of the State of North Carolina shall be abated or otherwise affected by the adoption of this act."

Session Laws 1971, c. 832, s. 8, contains a severability clause.

For note on control of pesticides, see 49 N.C.L. Rev. 529 (1971).

§ **143-435. Preamble.** — (a) The Legislative Research Commission was directed by House Resolution 1392 of the 1969 General Assembly "to study agricultural and other pesticides," and to report its findings and recommendations to the 1971 General Assembly. Pursuant to said Resolution a report was prepared and adopted by the Legislative Research Commission in 1970 concerning pesticides. In this report the Legislative Research Commission made the following findings concerning the use and effects of pesticides and the need for legislation concerning control of pesticide use, of which the General Assembly hereby takes cognizance:

(1) The use of chemical pesticides has developed since the 1940's into a major, new billion-dollar industry. Pesticides have bettered the lot of mankind in many ways and especially have assisted the farmer by their contribution to a stable and inexpensive supply of high quality food, fiber and forest products. The control of insects, fungi and other pests is essential to the public health and welfare and specifically to the prevention of disease, to the production and preservation of food, fiber, and forests and to the protection of other aspects of modern civilization.

(2) The use of pesticides for these important purposes is currently a matter of serious public concern and their use in some instances presents risks to man and the environment which must be weighed against the benefits of those uses in the over-all public interest. Evidence is accumulating that extensive use of persistent pesticides poses hazards to health and the environment. Environmental problems resulting from the use, over-use and misapplication of some chemicals, and the disposal of unused chemicals and containers, have grown to the point where contamination of the environment is approaching significant proportions.

There is concern among scientists and public health personnel about the long-term chronic effects of pesticide pollution on human health. Contamination by DDT has been shown to be global in extent. Moreover, recent experience in North Carolina and elsewhere has shown that the more toxic but less persistent pesticides cannot safely be substituted for the persistent "hard" pesticides without stringent safeguards.

(3) More extensive observation, study and monitoring of the effectiveness and the use of pesticides and of undesirable side effects on man and on the environment and of their relative importance for the over-all public health and welfare are desirable in the public interest.

(4) Continued and strengthened control of the quality of pesticides and the control of labeling claims, direction for use and warnings are necessary for the protection of the purchasing public, including the household consumer, the farmer and other users.

(5) No existing legislation in North Carolina effectively limits or controls the use of pesticides. Misuse and misapplication of pesticides, while effectively controlled by law with respect to structural pest-control operators, is not adequately controlled with respect to some other major groups of pesticide applicators. Careless disposal of unused pesticides and contaminated containers is not controlled by law, and no North Carolina legislation requires that pesticide dealers, who are the principal source of advice for many pesticides users, be qualified to give advice or be held responsible for their advice. These gaps in legal control of pesticides are important and should be remedied.

(b) The purpose of this Article is to regulate in the public interest the use, application, sale, disposal and registration of insecticides, fungicides, herbicides, defoliants, desiccants, plant growth regulators, nematicides, rodenticides, and any other pesticides designated by the North Carolina Pesticide Board. New pesticides are continually being discovered or synthesized which are valuable for the control of insects, fungi, weeds, nematodes, rodents, and for use as defoliants, desiccants, plant regulators and related purposes. However, such pesticides may be ineffective or may seriously injure health, property, or wildlife if not properly used. Pesticides may injure man or animals, either by direct poisoning or by gradual accumulation of poisons in the tissues. Crops or other plants may also be injured by their improper use. The drifting or washing of pesticides into streams or lakes can cause appreciable danger to aquatic life. A pesticide applied for the purpose of killing pests in a crop, which is not itself injured by the pesticide, may drift and injure other crops or nontarget organisms with which it comes in contact. In furtherance of the findings and recommendations of the Legislative Research Commission, it is hereby declared to be the policy of the State of North Carolina that for the protection of the health, safety, and welfare of the people of this State, and for the promotion of a more secure, healthy and safe environment for all the people of the State, the future sale, use and application of pesticides shall be regulated, supervised and controlled by the State in the manner herein provided. (1971, c. 832, s. 1.)

§ 143-436. North Carolina Pesticide Board; creation and organization.—(a) There is hereby established the North Carolina Pesticide Board which, together with the Commissioner of Agriculture, shall be responsible for carrying out the provisions of this Article.

(b) The Pesticide Board shall consist of seven members, to be appointed by the Governor, as follows:

(1) One member each representing the North Carolina Department of Agriculture, the North Carolina Department of Health, and a State conservation agency. The persons so selected may be either members of a policy board or departmental officials or employees.

(2) A representative of the agricultural chemical industry.
(3) A person directly engaged in agricultural production.
(4) Two at-large members, from fields of endeavor other than those enumerated in subdivisions (2) and (3) of this subsection, one of whom shall be a nongovernmental conservationist.

(c) The members of the Pesticide Board shall serve staggered four-year terms. Of the persons originally appointed, the members representing State agencies shall serve two-year terms, and the four at-large members shall serve four-year terms. All members shall hold their offices until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board prior to the expiration of the term shall be filled by appointment by the Governor for the remainder of the unexpired term. The Governor may at any time remove any member from the Board for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the same credentials as his predecessor.

(d) The Board shall select its chairman from its own membership, to serve for a term of two years. The chairman shall have a full vote. Any vacancy occurring in the chairmanship shall be filled by the Board for the remainder of the term. The Board may select such other officers as it deems necessary.

(e) Any action of the Board shall require at least four concurring votes.

(f) The members of the Board who are not officers or employees of the State shall receive for their services the per diem and compensation prescribed in G.S. 138-5. (1971, c. 832, s. 1.)

§ 143-437. Pesticide Board; functions. — The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

(1) To adopt rules and regulations and make policies for the programs set forth in this Article.
(2) To carry out a program of planning and of investigation into long-range needs and problems concerning pesticides.
(3) To collect, analyze and disseminate information necessary for the effective operation of the programs set forth in this Article.
(4) To provide professional advice to public and private agencies and citizens of the State on matters relating to pesticides, in cooperation with other State agencies, with professional groups, and with North Carolina State University and other educational institutions.
(5) To accept gifts, devises and bequests, and with the approval of the Governor to apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association or individual, and may comply with the terms, conditions and limitations of the grant, in order to accomplish any of the purposes of the Board, such grant funds to be expended pursuant to the Executive Budget Act.
(6) To inform and advise the Governor on matters involving pesticides, and to prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the management and control of pesticides in North Carolina.
(7) To make annual reports to the Governor and to make such other investigations and reports as may be requested by the Governor or the General Assembly. (1971, c. 832, s. 1.)

§ 143-438. Commissioner of Agriculture to administer and enforce Article.—The Commissioner of Agriculture shall have the following powers and duties under this Article:

(1) To administer and enforce the provisions of this Article.

(2) To attend all meetings of the Pesticide Board, but without power to vote (unless he be designated as the ex officio member of the Board from the Department of Agriculture).

(3) To keep an accurate and complete record of all Board meetings and hearings, and to have legal custody of all books, papers, documents and other records of the Board.

(4) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more of the divisions and other units within the Department of Agriculture.

(5) To direct the work of the personnel employed by the Board and of the personnel of the Department of Agriculture who have responsibilities concerning the programs set forth in this Article.

(6) To delegate to any division head or other officer or employee of the Department of Agriculture any of the powers and duties given to the Department by statute or by the rules, regulations and procedures established pursuant to this Article.

(7) To perform such other duties as the Board may from time to time direct. (1971, c. 832, s. 1.)

§ 143-439. Pesticide Advisory Committee; creation and functions.—(a) There is hereby authorized the establishment of the Pesticide Advisory Committee, which shall assist the Board and the Commissioner in an advisory capacity on matters which may be submitted to it by the Board or the Commissioner, including technical questions and the development of rules and regulations.

(b) The Pesticide Advisory Committee shall consist of 15 members to be appointed by the Board, as follows: Three practicing farmers; one conservationist (at large); one ecologist (at large); one representative of the pesticide industry; one representative of agri-business (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife and/or biology; one member each representing the North Carolina Department of Agriculture, the North Carolina Department of Health and a State conservation agency; one representative of a public utility or railroad company which uses pesticides, or of the State Highway Commission.

(c) Members of the Pesticide Advisory Committee shall serve at the pleasure of the Board. The members who are not officers or employees of the State shall receive regular State subsistence and travel expenses. (1971, c. 832, s. 1.)

Part 2. Regulation of the Use of Pesticides.

§ 143-440. Restricted-use pesticides regulated.—(a) The Board may, by regulation after a public hearing, adopt and from time to time revise a list of restricted-use pesticides for the State or for designated areas within the State. The Board may designate any pesticide or device as a "restricted-use pesticide" upon the grounds that, in the judgment of the Board, (either because of its persistence, its toxicity, or otherwise) it is so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment, other than the pests it is intended to prevent, destroy, control, or mitigate that additional restrictions on its sale, purpose, use or possession are required.

(b) The Board may include in any such restricted-use regulation the time and conditions of sale, distribution, or use of such restricted-use pesticides; may prohibit the use of any restricted-use pesticide for designated purposes or at designated places or times; may require the purchaser or user to certify that restricted-use pesticides will be used only as labeled or as further restricted by regulations; and may, if it deems it necessary to carry out the provisions of this Part, require that any or all restricted-use pesticides shall be purchased, possessed, or used only under permit of the Board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The Board may require all persons issued such permits to maintain records as to the use of the restricted-use pesticides. The Board may authorize the use of restricted-use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit. (1971, c. 832, s. 1.)

Cross Reference. — See Editor's note under § 143-434.

§ **143-441. Handling, storage and disposal of pesticides.**—(a) The Board may adopt regulations:

(1) Concerning the handling, transport, storage (which may include security precautions), display or distribution of pesticides, and concerning the disposal of pesticides and pesticide containers.

(2) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, or misuse.

(b) No person shall handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with pesticides, or in any manner contrary to the regulations of the Board.

(c) No person shall dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or to pollute any water supply or waterway, or in any manner contrary to the regulations of the Board. (1971, c. 832, s. 1.)

§ **143-442. Registration.**—(a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually. The applicant for registration shall file with the Board a statement including:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use; and

(4) If requested by the Board a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(b) The applicant shall pay an annual registration fee of twenty-five dollars ($25.00) for each brand or grade of pesticide registered. An additional twenty-five dollars ($25.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article.

(c) The Board, when it deems necessary in the administration of this Article, may require the submission of the complete formula of any pesticide.

(d) If it appears to the Board that the composition of an article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of G.S. 143-443 the Board shall register the article. If it does not appear to the Board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Part, it shall not register the article and in turn shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fail to comply. The Board, in accordance with the procedures specified herein, may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling complies with the provisions of this Part. Whenever an application for registration is refused or the Board proposes to suspend or cancel a registration, notice of such action shall be given to the applicant or registrant who shall have the right within 10 days of receipt of such notice to request a hearing on the action or proposed action of the Board, as provided in G.S. 143-464.

(e) The Board is authorized and empowered to refuse to register, or to cancel the registration of any or all brands and grades of pesticides as herein provided, upon satisfactory proof that the registrant or applicant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Part, or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant or applicant shall have been given the opportunity for a hearing by the Board, as provided in G.S. 143-464.

(f) Notwithstanding any other provisions of this Part, registration is not required in the case of a pesticide shipped from one plant within this State to another plant within this State operated by the same person. (1971, c. 832, s. 1.)

Cross Reference. — See Editor's note under § 143-434.

§ **143-443. Miscellaneous prohibited acts.**—(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any pesticide which has not been registered pursuant to the provisions of G.S. 143-442, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with the registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: Except that, in the discretion of the Board, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:
  a. The name and address of the manufacturer, registrant, or person for whom manufactured;
  b. The name, brand, or trademark under which said article is sold; and
  c. The net weight or measure of the content subject, however, to such reasonable variations as the Board may permit.

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in G.S. 143-444, unless the label shall bear, in addition to any other matter required by this Part:
  a. The skull and crossbones;
  b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and
  c. A statement of an antidote for the pesticide.

(4) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Part, or any other white or lightly colored pesticide which the Board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored, provided, that the Board may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the Board determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

(6) Any pesticide in containers violating regulations adopted pursuant to G.S. 143-441. Pesticides found in containers which are unsafe due to damage or defective construction may be seized and impounded.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

(2) For any person to use for his own advantage or to reveal, other than to the Board or proper officials or employees of the State or federal government or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of G.S. 143-442. (1971, c. 832, s. 1.)

Cross Reference. — See Editor's note under § 143-434.

§ **143-444. Determinations.**—The Board is authorized:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) To determine whether pesticides are highly toxic to man; and

(3) To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of G.S. 143-443(a)(4). (1971, c. 832, s. 1.)

Cross Reference.—See Editor's note under § 143-434.

§ **143-445. Exemptions.**—(a) The penalties provided for violations of G.S. 143-443(a) shall not apply to:

(1) Any carrier while lawfully engaged in transporting pesticides within this State, if such carrier shall, upon request, permit the Board or its designated agent to copy all records showing the transactions in and movement of the articles;

(2) Public officials of this State or local subdivisions thereof and the federal government engaged in the performance of their official duties;

(3) The manufacturer or shipper of a pesticide for experimental use only,

a. By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of pesticides, or

b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only —Not to be sold," together with the manufacturer's name and address; (except that if a written permit has been obtained from the Board, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit).

(b) No article shall be deemed in violation of this Part when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this Part shall apply. (1971, c. 832, s. 1.)

Cross Reference. — See Editor's note under § 143-434.

§ **143-446. Samples; submissions.**—(a) The Board, or its agent, is authorized and directed to sample, test, inspect and make analyses of pesticides sold or offered for sale or distributed within this State, at time and place and to such an extent as it may deem necessary to determine whether such pesticides are in compliance with the provisions of this Article. The Board is authorized to adopt regulations concerning the collection and examination of samples (or devices), and to adopt regulations establishing tolerances providing for reasonable deviations from the guaranteed analysis.

(b) The official analysis shall be made from the official sample. A sealed and identified sample, herein called "official check sample" shall be kept until the analysis is completed on the official sample, except that the registrant may obtain upon request a portion of said official sample. If the official analysis conforms with the provisions of this Part, the official check sample may be destroyed. If the official analysis does not conform with the provisions of this Part, then the official check sample shall be retained for a period of 90 days from the date of the certificate of analysis of the official sample.

(c) The Board, of its own motion or upon complaint, may cause an examination to be made for the purpose of determining whether any pesticide complies with the requirements of this Part. If it shall appear from such examination that a pesticide fails to comply with the provisions of this Part, the Board may cause notice to be given to the offending person in the manner provided in G.S. 143-464, and the proceedings thereupon shall be as provided in such section; provided that pesticides may be seized and confiscated as provided in G.S. 143-447.

(d) The Board shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under the authority of this Article. (1971, c. 832, s. 1.)

§ **143-447. Emergency suspensions; seizures.**—(a) Notwithstanding any other provision of this Article, the Board may, when it finds that such action is necessary to prevent an imminent hazard to the public, or any other nontarget organism or segment of the environment, by order, suspend the registration of a pesticide immediately. In such case, it shall give the registrant prompt notice of such action and afford the registrant the opportunity for an expedited hearing. Final orders of the Board under this Part shall be subject to review as provided for in G.S. 143-464. Such review shall be instituted within 30 days after receipt by the applicant for registration or registrant of the Board's order. In no event shall registration of a pesticide be construed as a defense to any charge of an offense prohibited under this Article.

(b) It shall be the duty of the Board to issue and enforce a written or printed "stop sale, stop use, or removal" order to the owner or custodian of any lot of pesticide and for the owner or custodian to hold said lot at a designated place when the Board finds said pesticide is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said pesticide is released in writing by the Board or said violation has been otherwise legally disposed of by written authority. The Board shall release the pesticide so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. The registrant of a pesticide found deficient in active ingredients shall be subject to a penalty for the deficiency. The deficiency penalty shall be three times the percentage deficiency times the retail value as established by the consignee at the time of sampling, but not less than twenty-five dollars ($25.00).

(c) Any pesticide (or device) that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce between points within this State through any point outside this State shall be liable to be proceeded against in superior court in any county of the State where it may be found and seized for confiscation by process or libel for condemnation:

(1) In the case of a pesticide,
  a. If it is adulterated or misbranded,
  b. If it has not been registered under the provisions of G.S. 143-442,
  c. If it fails to bear on its label the information required by this Part,
  d. If it is a white or lightly colored pesticide and is not colored as required under this Part.
(2) In the case of a device, if it is misbranded.

(d) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasurer; provided that the article shall not be sold contrary to the provisions of this Part; and provided further that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing or disposal, as the case may be.

(e) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article. (1971, c. 832, s. 1.)

Part. 3. Pesticide Dealers and Manufacturers.

§ **143-448. Licensing of pesticide dealers; fees.**—(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.

(b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a fee of twenty-five dollars ($25.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.

(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of twenty-five dollars ($25.00) for each license, on or before the first day of January of the calendar year for which the license is issued.

(d) If an application for renewal of a pesticide dealer's license is not filed on or before January 1 of any year, a penalty of twenty-five percent (25%) of the renewal fee shall be assessed and added to the fee, and shall be paid by the applicant before the renewal license is issued, but such penalty shall not apply if the applicant furnishes an affidavit that he has not distributed, sold, held for sale or offered for sale any restricted-use pesticide subsequent to the expiration of his prior license.

(e) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the Board.

(f) The Board shall issue to each applicant that satisfies the requirements of this Part a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended. (1971, c. 832, s. 1.)

Cross Reference. — See Editor's note under § 143-434.

§ 143-449. Qualifications for pesticide dealer license; examinations.—(a) An applicant for a license must present evidence satisfactory to the Board concerning his qualifications for such license. The basic qualifications shall be:

(1) Two years as an employee or owner-operator in the field of pesticide sales. One or more years training in pesticides and control of pests under university or college supervision may be substituted for practical experience. Each year of such training may be substituted for one year of practical experience; or

(2) A degree from a recognized college or university with training in entomology, plant pathology, weed science or related subjects including sufficient practical experience in pesticide use under proper supervision.

(b) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide dealer. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide dealer; and his knowledge of the laws and regulations governing the use and sale of pesticides.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of a pesticide dealer operating more than one location, and in the case of an applicant that is a corporation, governmental unit or agency, or other organized group;

(2) Provide for renewal license examinations at intervals not more frequent than four years. (1971, c. 832, s. 1.)

§ 143-450. Employees of pesticide dealers; dealer's responsibility.—(a) Every licensed pesticide dealer shall submit to the Board with each application for an original or renewal license, and at such other times as the Board may prescribe, the names of all persons employed by him who sell or recommend "restricted-use pesticides."

(b) Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides. (1971, c. 832, s. 1.)

§ 143-451. Denial, suspension, revocation of license.—(a) The Board may suspend for not longer than 10 days, pending inquiry, and, after opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provision of any license issued under this Part, if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

(2) Made a pesticide recommendation not in accordance with the label registered pursuant to this Article;

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(4) Failed to pay the original or renewal license fee when due, and continued to sell restricted-use pesticides without paying the license fee, or sold restricted-use pesticides without a license;

(5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

(7) Made false or fraudulent records, invoices, or reports;

(8) Used fraud or misrepresentation in making an application for a license or renewal of a license, or in selling or offering to sell restricted-use pesticides;

(9) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(10) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;

(11) Impersonated any state, county, or city inspector or official;

(12) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1.)

Part 4. Pesticide Applicators and Consultants.

§ **143-452. Licensing of pesticide applicators; fees.**—(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

(b) Applications for a pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a fee of twenty-five dollars ($25.00) for each pesticide applicator's license and in addition an annual inspection fee of ten dollars ($10.00) for each aircraft to be licensed and five dollars ($5.00) for each piece of ground equipment to be licensed. Should any equipment fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an added inspection fee in the same amount as the original fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with laws and regulations. All licensed equipment shall be identified by a license plate or decal furnished by the Board, at no cost to the licensee, which plate or decal shall be affixed in a location and manner upon such equipment as prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees.

(c) If the application for renewal of any license provided for in this Part is not filed prior to January 1 in any year, a penalty fee of twenty-five percent (25%) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued.

(d) The Board shall classify licenses to be issued under this Part. Separate classifications shall be specified (i) for ground and aerial methods used by any licensee to apply pesticides, and (ii) covering State and local governmental units engaged in the control of rodents and insects of public health significance. The Board may include such further classifications and subclassifications as the Board considers appropriate. For aerial applications, a license shall be required both for the contractor and the pilot. Each classification shall be subject to separate testing procedures and requirements.

(e) Every licensed pesticide applicator who changes his address shall immediately notify the Board.

(f) If the Board finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under G.S. 143-467, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency to operate the equipment described in the application, the Board shall issue a pesticide applicator's license limited to the classifications for which he is qualified. Every such license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the Board for cause, or unless such financial security required under G.S. 143-467 is dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security. The license may restrict the applicant to the use of a certain type or types of equipment or pesticides or to certain areas if the Board finds that the applicant is qualified to use only such type or types. If a license is not issued as applied for, the Board shall inform the applicant in writing of the reasons therefor.

(g) A pesticide applicator's license shall not be transferable. When there is a transfer of ownership, management, or operation of a business of a licensee hereunder, the new owner, manager, or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, shall have 90 days from such sale or transfer, or until the next meeting of the Board following the expiration of said 90-day period, to have a qualified licensee to operate said business.

(h) Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of two dollars ($2.00). (1971, c. 832, s. 1.)

Cross Reference. — See Editor's note under § 143-434.

§ **143-453. Qualifications for pesticide applicator's license; examinations.**—(a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for such license. The basic qualifications shall be:

(1) Two years as an employee or owner-operator in the field of pesticide application. One or more years training in specialized pesticide application and control of pests under university or college supervision may be substituted for practical experience. Each year of such training may be substituted for one year of practical experience; or

(2) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, plant pathology, weed science or related subjects, including sufficient practical experience in pesticide application under proper supervision; or

(3) As to a local government employee dispensing only pesticides designed to destroy or repel insects of public health significance or to control rodents, sufficient experience to satisfy the Board of his ability to properly dispense such pesticides.

(b) Each applicant shall satisfy the Board as to his knowledge of the laws and regulations governing the use and application of pesticides in the classifications he has applied for (manually or with various equipment that he may have applied for a license to operate), and as to his responsibility in carrying on the business of a pesticide applicator. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide applicator; and his knowledge of the laws and regulations governing the use and application of pesticides in the classification for which he has applied.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of an applicant that is a corporation or governmental unit or agency;

(2) Provide for license renewal examinations at intervals not more frequent than four years. (1971, c. 832, s. 1.)

§ **143-454. Solicitors, salesmen and operators; applicator's responsibility.**—(a) Every licensed pesticide applicator shall submit to the Board with each application for an original or renewal license, and at such other times as the Board may prescribe, the names of all solicitors, salesmen and operators employed by him.

(b) Each licensed pesticide applicator shall be responsible for solicitors, salesmen, and operators in his employment to assure that pesticides are used in a manner consistent with the intent of this Article. (1971, c. 832, s. 1.)

§ **143-455. Pest-control consultant license.**—(a) No person shall perform services as a pest-control consultant without first procuring from the Board a license. Applications for a consultant license shall be in the form and shall contain the information prescribed by the Board. The application for a license shall be accompanied by an annual fee of twenty-five dollars ($25.00).

(b) An applicant for a consultant license must present satisfactory evidence to the Board concerning his qualifications for such license. The basic qualifications shall be:

(1) Two years of experience in the field of pesticide consulting, or in such related field or fields as the Board may deem an acceptable equivalent. One or more years training in specialized pesticide consultation or such related fields as the Board may deem an acceptable equivalent, under university or college supervision, may be substituted for practical experience. Each year of such training may be substituted for one year of practical experience; or

(2) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, plant pathology, weed science or related subjects, including sufficient practical experience in pesticide application under proper supervision.

(c) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide consultant. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide consultant; and his knowledge of the laws and regulations governing the use and sale of pesticides.

(d) Pest-control consultants shall be subject to the same provisions as pesticide applicators concerning penalties for late applications for license, changes of address, transferability of licenses, periodic re-examination, and examinations for corporate applicants. (1971, c. 832, s. 1.)

§ **143-456. Denial, suspension, revocation of license.**—(a) The Board may suspend for not longer than 10 days pending inquiry by the Commissioner, and, after opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provisions of any license issued under this Part, if it finds that the applicant or licensee or his registered employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
(3) Operated faulty or unsafe equipment;
(4) Operated in a faulty, careless, or negligent manner;
(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required;
(7) Made false or fraudulent records, invoices, or reports;
(8) Operated unlicensed equipment;
(9) Used fraud or misrepresentation in making an application for a license or renewal of a license;
(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;
(11) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;
(12) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
(13) Impersonated any state, county, or city inspector or official;
(14) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations;
(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1.)

§ **143-457. Damaged person must file report of loss; contents; time for filing; effect of failure to file.**—(a) Any person claiming damages from pesticide application shall have filed with the Board a written statement claiming that he has been damaged, on a form prescribed by the Board within 21 days after the date that damages are apparent, or prior to the time that twenty-five percent (25%) of a crop damaged shall have been harvested. Such statement shall contain, but shall not be limited thereto, the name of the person responsible for the application of said pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damages are claimed and the date on which it is alleged that the damage occurred. The Board shall prepare a form to be furnished to persons to be used in such cases and such form shall contain such other requirements as the Board may deem proper. The Board shall, upon receipt of such statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility, for the damages claimed, and furnish copies of such statements as may be requested.

(b) The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action. The failure to file such a report shall not be a violation of this Article. However, if the person failing to file such a report is the only one injured from such use or application of a pesticide by others, the Board may, when in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license or permit issued under this Article until such report is filed. Where damage is alleged to have been done, the claimant shall permit the licensee and his representatives, such as bondsman or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee. (1971, c. 832, s. 1.)

§ **143-458. Rules and regulations concerning methods of application.**—(a) The Board shall have authority to issue regulations after notice and hearing as provided by G.S. 143-463 to carry out the provisions and purpose of this Part and in such regulations may prescribe methods to be used in the application of pesticides. Where the Board finds that such regulations are necessary to carry out the provisions of this Part, such regulations may relate to the time, place, manner, and method of application of the pesticides, may restrict or prohibit sale and use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the Board deems necessary to prevent damage or injury by drift or misapplication to:

(1) Plants, including forage plants, on adjacent or nearby land;
(2) Wildlife in the adjoining or nearby areas;
(3) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; or
(4) Other animals, persons or beneficial insects.

In issuing such regulations, the Board shall give consideration to pertinent research findings and recommendations of other agencies of this State or of the federal government.

(b) The Board may by regulation require that notice of a proposed application of a pesticide be given to land owners adjoining the property to be treated or in the immediate vicinity thereof, if it finds that such notice is necessary to carry out the purpose of this Article. (1971, c. 832, s. 1.)

§ **143-459. Reporting of shipments and volumes of pesticides.**—Every person selling pesticides directly to the consumer shall file with the Board, in such manner and with such frequency as the Board may prescribe, reports of purchases, sales and shipments of restricted-use pesticides and other pesticides designated by the Board. Failure to file any report when due shall be cause for suspension or revocation of any license or registration issued under this Article, or for denial of the issuance or renewal of any such license or registration, and shall be a misdemeanor, punishable as provided by G.S. 143-469. The time for reporting may be extended for an additional 15 days for cause, upon written request to the Board. All reports provided under this Part are provided solely for the purposes of the Board. (1971, c. 832, s. 1.)

Part 5. General Provisions.

§ **143-460. Definitions.**—As used in this Article, unless the context otherwise requires:

(1) The term "active ingredient" means
    a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;
    b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;
    c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of a plant tissue.

(2) The term "adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(4) "Board" means the North Carolina Pesticide Board.

(5) "Commissioner" means the North Carolina Commissioner of Agriculture.

(6) "Committee" means the Advisory Committee on Pesticides.

(7) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(8) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(9) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, weeds, nematodes, or such other pests as may be designated by the Board, but not including equipment used for the application of pesticides when sold separately therefrom.

(10) "Engage in business" means any application of pesticide by any person for use upon lands of another, or any sale of pesticide by any person.

(11) "Equipment" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand-sized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(12) The term "fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(13) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

(14) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(15) The term "inert ingredient" means an ingredient which is not an active ingredient.

(16) The term "ingredient statement" means

a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and

b. In case the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

(17) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, wasps, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(18) The term "insecticide" means any substance or mixture of substances

intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(19) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide (or device) or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide (or device).

(20) The term "labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;

b. Accompanying the pesticide (or device) at any time;

c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate, nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by law to conduct research in the field of pesticides.

(21) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(22) "Manufacturer" includes any person engaged in the business of importing, producing, preparing, formulating, mixing, or processing pesticides.

(23) The term "misbranded" shall apply:

a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

b. To any pesticide:

1. If it is an imitation of or is offered for sale under the name of another pesticide;

2. If its labeling bears any reference to registration under this Article;

3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;

5. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase except that the Board may permit the statement to appear prominently on some other part of the container, if the size or form of the container make it impractical to comply with the requirements of this subparagraph;

6. If any word, statement, or other information required by or under the authority of this Article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such

terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

7. If in the case of an insecticide, nematicide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticides or
8. In the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticides, except that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(24) The term "nematicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(25) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(26) A "person" is any person, including (but not limited to) an individual, firm, partnership, association, company, joint stock association, public or private institution, municipality or county or local government unit (as defined in G.S. 143-215.40(b)), state or federal governmental agency, or private or public corporation organized under the laws of this State or the United States or any other state or country.

(27) "Pest-control consultant" means any person, who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insects, plant diseases, weeds, and other pests, but does not include any person regulated by the North Carolina Structural Pest Control Act (G.S. Chapter 106, Article 4C).

(28) The term "pesticide" means

a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Board shall declare to be a pest, and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(29) "Pesticide applicator" means any person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands of another. It includes public operators, but does not include:

a. Any person applying pesticides for himself with ground equipment who

1. Operates and maintains pesticide applicator equipment primarily for his own use;
2. Is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation;

3. Does not publicly hold himself out as a pesticide applicator; and
4. Operates his pesticide applicator equipment only in the vicinity of his own property and for the accommodation of his neighbors.

b. Any person regulated by the North Carolina Structural Pest Control Law (General Statutes Chapter 106, Article 4C.)

(30) The term "pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale restricted use pesticides for distribution directly to users. The term pesticide dealer does not include:

a. Persons whose sales of pesticides are limited to pesticides in consumer-sized packages (as defined by the Board) which are labeled and intended for home and garden use only and are not restricted-use pesticides, or

b. Practicing veterinarians and physicians who prescribe, dispense, or use pesticides in the performance of their professional services.

(31) "Pesticide operator" means a person who is employed or directly supervised by a pesticide applicator, and who in turn either

a. Directly supervises activities in the field including recommending controls, handling, mixing, and applying pesticides in the field, and the disposal of waste, excess materials, or containers, or

b. Is the sole employee engaged in such activities.

(32) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Public operator" means any person in charge of any equipment used by public utilities (as defined by General Statutes Chapter 62), State agencies, municipal corporations, or other governmental agencies applying pesticides.

(34) The term "registrant" means the person registering any pesticide pursuant to the provisions of this Article.

(35) The term "restricted-use pesticide" means a pesticide which the Board has designated as such pursuant to G.S. 143-440.

(36) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, attracting, or mitigating rodents or any other vertebrate animal which the Board shall declare to be a pest.

(37) The term "weed" means any plant or part thereof which grows where not wanted.

(38) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this Article, pests; including but not limited to mammals, birds, and aquatic life. (1971, c. 832, s. 1.)

Cross Reference. — See Editor's note under § 143-434.

Editor's Note.—There is no subdivision (3) in this section as it appears in Session Laws 1971, c. 832, s. 1.

§ 143-461. General powers of Board.—In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Board shall have the power, at any time and from time to time:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed

in the administration of this Article: provided, that no such regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-463. Unless the Board deems there are overriding policy considerations involved, any regulation of the Board, which will in the judgment of the Board result in severe curtailment of the usefulness or value of inventories or equipment in the hands of persons licensed under this Article, should be given a future effective date so as to minimize undue potential economic loss to licensees;

(2) To authorize the Commissioner by proclamation to suspend or implement, in whole or in part, particular regulations of the Board which may be affected by variable conditions. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. All proclamations shall expire on the date of the next succeeding Board meeting following their issuance. The Commissioner must keep a permanent file of the texts of proclamations issued by him, and furnish upon request certified copies of any proclamation for use in evidence in any civil or criminal proceeding in which the text of a proclamation may be in issue. Proclamations need not be filed with the Secretary of State or with any clerk of court. The Commissioner must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby;

(3) To conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article;

(4) To conduct public hearings in accordance with the procedures prescribed by this Article;

(5) To delegate such of the powers of the Board as the Board deems necessary (other than its powers to adopt rules and regulations of any kind) to one or more of its members, to the Commissioner, or to any qualified employee of the Board or of the Commissioner; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Board. Any person to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board for decision;

(6) To call upon the Attorney General for such legal advice and assistance as is necessary to the functioning of the Board;

(7) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business, as the Board may deem necessary for the enforcement of any of the provisions of this Article or of any official actions of the Board, including proceedings to enforce subpoenas or for the punishment of contempt of the Board. Upon violation of any of the provisions of this Article, or of any regulation of the Board adopted under the authority of this Article the Board may, either before or after the institution of any other proceedings (civil or criminal), institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any other penalty or remedy prescribed by this Article for any violation of same;

(8) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings. (1971, c. 832, s. 1.)

§ 143-462. Procedures for revocations and related actions affecting licenses.—In all proceedings, the effect of which would be to revoke, suspend, deny, or withhold renewal of a license issued under Part 3 or Part 4 of this Article, or to deny permission to take an examination for such a license, the provisions of G.S. Chapter 150 (Uniform Revocation of Licenses) shall be applicable. (1971, c. 832, s. 1.)

§ 143-463. Procedures for adoption of certain rules and regulations; publication of rules and regulations.—(a) Prior to the adoption by the Board of rules or regulations authorized by G.S. 143-440, G.S. 143-441, or G.S. 143-458, the Board shall conduct one or more public hearings with respect to any such proposed action, in accordance with the procedures prescribed by subsection (b) of this section.

(b) The following provisions shall apply to the public hearings required by subsection (a) of this section:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Board proposes to take. The notice shall either include details of such proposed action, or where such proposed action is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the office of the Board in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the State, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Board pursuant to the provisions of G.S. 143-464.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Board on or before the first date set for the hearing. The Board is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Board shall permit anyone who so desires to file a written argument or other statement with the Board in relation to any proposed action of the Board any time within 30 days following the conclusion of any public hearing or within any such additional time as the Board may allow by notice given as prescribed in this section.

(c) Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Board pursuant to this section, the Board shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations.

(d) The Board is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the subjects referred to in subsection (a); any such modification or revocation, however, to be subject to the procedural requirements of this section.

(e) All official acts of the Board which have or are intended to have general application effect shall be incorporated either in the Board's official regulations (applying and interpreting this Article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Board be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Secretary of State. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Board in sufficient numbers to satisfy all reasonable requests therefor. The Board shall codify its regulations and rules and from time to time shall revise and bring up to date such codifications. (1971, c. 832, s. 1.)

§ 143-464. Procedures with respect to registration of pesticides and certain other matters; mailing list; seal; judicial review.—(a) In any proceeding wherein an application for registration of a pesticide is refused or the Board proposes to suspend or cancel a registration, the Board shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceedings who shall be made a party thereto. The Board shall also apprise all persons on its mailing list on the date when the action is taken of all of its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have general application and effect. It shall be the duty of the Board to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Board, ask to be permanently recorded on such mailing list.

(b) All notices which are required to be given by the Board or by any party to a proceeding shall be given by regular mail to all persons entitled thereto, including the Board. The certificate of the person designated by the Board to mail such notices that the notices were mailed, giving the mailing date, shall be conclusive in the absence of fraud. Notice by the Board may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Board by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(c) The following provisions, together with any additional provisions not inconsistent herewith which the Board may prescribe, shall be applicable in connection with hearings pursuant to this Article, except where other provisions are applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to G.S. 143-442 whether called at the instance of the Board or of any person, shall be held upon not less than 30 days' written notice given by the Board to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings shall be before the Board or its authorized agent or agents, and the hearing shall be open to the public. The Board, or its authorized agents, shall have the authority to administer oaths.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Board or by some other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Board.

(4) The Board shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) Subpoenas or subpoenas duces tecum issued by the Board on its own behalf or on behalf of a party to the proceeding in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Board, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the Board, as the case may be, at whose instance the hearing is being held.

(7) Without regard to subdivision (6) of this subsection, the burden of proof to justify the safety of any pesticide shall be upon the applicant for registration or for licenses or permits to use, apply or sell pesticides.

(8) No decision or order of the Board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(9) Following any hearing, the Board shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Board proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Board's ruling with respect to each such requested finding of fact and conclusion of law.

(10) All orders and decisions of the Board shall set forth separately the Board's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Board is based.

(11) The Board shall have the authority to adopt a seal which shall be the seal of said Board and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Board or its minutes may be certified by the Chairman or Secretary of the Board under his hand and the seal of the Board and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Board shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Board or by any other person or interested party where material, relevant and competent.

(d) Any person who is aggrieved by a final decision of the Board in any matter shall have a right of appeal to the superior court pursuant to the provisions of Article 33 of G.S. Chapter 143. (1971, c. 832, s. 1.)

§ **143-465. Reciprocity; intergovernmental cooperation.**—(a) The Board may issue any license required by this Article on a reciprocal basis with other states without examination to a nonresident who is licensed in another state substantially in accordance with any of the provisions of the Article, provided that financial security as provided for in G.S. 143-467 is met.

(b) The Board may cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article.

(c) In order to avoid confusion resulting from diverse requirements and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end the Board is authorized, after public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this Article, as have been or may be prescribed with respect to pesticides by departments or agencies of the United States government. (1971, c. 832, s. 1.)

§ 143-466. Records; information; inspection; enforcement.—(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by regulation. Such records shall be kept for a period of three years from the date of the application of the pesticide to which such records refer, and shall be available for inspection by the Board or its agents at its request.

(b) The Board may publish information regarding injury which may result from improper application or use of pesticides and the methods and precautions designed to prevent such injury.

(c) The Board may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by the Board by regulation.

(d) The Board may provide for inspection of any place of business where pesticides are stored or sold and may require changes in methods of handling, displaying and storing of all pesticides. A list of requirements that places of business must meet may be adopted by regulation of the Board.

(e) For the purpose of carrying out the provisions of this Article, inspectors designated by the Board may enter upon any public or private premises at reasonable times, in order:

(1) To have access for the purpose of inspecting the premises and any equipment subject to this Article and such premises on which such equipment is kept or stored;
(2) To inspect lands actually or reported to be exposed to pesticides;
(3) To inspect storage or disposal areas;
(4) To inspect or investigate complaints of injury to humans, land or plants; or
(5) To sample pesticides being applied, or to be applied.

No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. Should the Board or its designated agent be denied access to any land where such access was sought for the purposes set forth in this Article, the Board may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application issue the search warrant for the purposes requested. (1971, c. 832, s. 1.)

§ 143-467. Financial responsibility. — (a) The Board may require from a licensee or an applicant for a license under this Article evidence of his financial ability to properly indemnify persons suffering damage from the use or application of pesticides, in the form of a surety bond, liability insurance or cash deposit. The amount of this bond, insurance or deposit shall be determined by the Board, in light of the risk of damage. The indemnification requirements may extend to damage to persons and property from equipment used (including aircraft).

(b) The Board may also require a reasonable performance bond with satisfactory surety to secure the performance of contractual obligations of the licensee, with respect to application of pesticides. Any person injured by the breach of any such obligation or any person damaged by pesticides or by equipment used in their application shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained.

(c) Any regulations adopted by the Board pursuant to G.S. 143-461 to implement this section may provide for such conditions, limitations and requirements concerning the financial responsibility required by this section as the Board deems necessary, including but not limited to notice of reduction or cancellation of coverage, deductible provisions, and acceptability of surety. Such regulations may classify financial responsibility requirements according to the separate license classifications and subclassifications prescribed by the Board pursuant to G.S. 143-452 and the dealer category (Part 3 of this Article). (1971, c. 832, s. 1.)

§ **143-468. Disposition of fees.**—All fees and charges received by the Board under this Article shall be deposited in the Department of Agriculture General Fund Budget for the purpose of administration and enforcement of this Article, with proper approved accounting procedures accounting for all expenditures and receipts. (1971, c. 832, s. 1.)

§ **143-469. Penalties.**—Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties. (1971, c. 832, s. 1.)

§ **143-470. Provisional or interim licenses.**—The Board is hereby authorized to adopt regulations providing for the issuance of interim or provisional licenses to any or all categories of licensees under this Article. Such regulations, among other things, may waive any particular license requirements, may reduce any license qualification or requirement, and may provide for the phasing of the effectuation of any license requirement. No interim or provisional license issued pursuant to this section shall have an expiration date later than December 31, 1973. (1971, c. 832, s. 1.)

ARTICLE 53.

North Carolina Drug Authority.

§ **143-471. Authority established.**—(a) There is hereby established in the Department of Administration the office of the North Carolina Drug Authority.

(b) The office of the North Carolina Drug Authority shall be administered by a Director who shall be aided and advised by the Drug Authority. The Director shall be appointed by and serve at the pleasure of the Governor. The salary of the Director shall be fixed under the State Personnel Act. (1971, c. 922.)

§ **143-472. Drug Authority; organization.**—(a) Membership.—The Drug Authority shall consist of the following 13 members: The Attorney General, the Commissioner of Mental Health, the State Health Director, the Commissioner of Correction, the Commissioner of Juvenile Correction, the Superintendent of Public Instruction, the Chairman of the Board of Higher Education, the Director of State Vocational Rehabilitation Services, the executive officer of the State Board of Pharmacy, a member of the Board of Medical Examiners of the State of North Carolina appointed by the Board of Medical Examiners for a term of two years commencing July 1 of each odd-numbered year, a member of the North Carolina House of Representatives appointed by the Speaker of the House of Representatives for a term of two years commencing July 1 of each odd-numbered year, a member of the North Carolina Senate appointed by the President pro tempore of the Senate for a term of two years commencing July 1 of each odd-numbered year, and a youth member appointed by the Governor for a term of two years commencing July 1 of each odd-numbered year.

The officers and employees of the State listed above shall be deemed to serve as members ex officio of the Drug Authority and their membership on the Authority shall not be deemed to be constitutionally incompatible with their primary offices or places under the terms of the Constitution of North Carolina, Article VI, § 9. Any ex officio member may designate another person to represent him on the Authority.

(b) Vacancies.—Any vacancy occurring in any appointive position prior to the regular expiration of the term shall be filled by appointment by the Governor for the remainder of the unexpired term.

(c) Officers.—The Governor shall appoint the Chairman of the Drug Authority from its membership, but the members of the Authority may elect such other officers from its membership as it deems necessary.

(d) Allowances.—The members of the Board who are not officers or employees of the State or agencies of the State, shall receive for their services the per diem and allowances prescribed in G.S. 138-5. (1971, c. 922.)

§ 143-473. Drug Authority; function.—(a) The Drug Authority shall meet from time to time, but at least quarterly, at the call of the Director or on call of any three members.

(b) The Drug Authority shall have the following powers:

(1) Coordinate all State efforts related to drug abuse prevention, education, control, treatment, and rehabilitation to the end that the effort to control drug abuse shall be efficiently and effectively administered and duplicating and overlapping efforts eliminated.

(2) Review all requests by nonstate agencies to federal agencies for funds to finance drug abuse prevention, education, control, treatment, or rehabilitation programs. Federal funds may be spent within the State of North Carolina only when approved by the North Carolina Drug Authority except in those instances in which requirements for approval by the Drug Authority violates federal law or regulations.

(3) Coordinate the State's efforts with those of local and municipal governments within the State and with those of other states and the federal government.

(4) Assist private agencies and community organizations by providing needed coordination and information.

(5) Assist in the planning and supervision of public informational programs related to drug abuse.

(6) Assist with the formulation and coordination of programs relating to the early diagnosis, treatment, and rehabilitation of drug abusers.

(7) Assist with the formulation and coordination of training and informational programs for State employees and others.

(8) Coordinate the State's efforts to obtain federal funds available for drug abuse programs.

(9) Make rules and regulations to carry out the duties and responsibilities of the Drug Authority. (1971, c. 922.)

§ 143-474. Director of the Drug Authority; duties.—(a) The Director of the North Carolina Drug Authority shall administer the Authority and, with approval of the Authority perform all duties, exercise all powers, and assume and discharge all responsibilities vested by law in the Authority, except as otherwise expressly provided by statute.

(b) The Director may delegate to any officer or employee of the Authority any of the powers and duties given to the Director by statute or by the rules, regulations and procedures adopted pursuant to this Article.

(c) The Director shall appoint professional and nonprofessional staff of the Authority and have legal custody of all books, papers, documents and other records of the Authority.

(d) The Director shall make an annual report to the Drug Authority which shall be transmitted to the Governor and the General Assembly, and he shall provide any of them with any additional information that may be requested at any time. (1971, c. 922.)

§ **143-475. Short title.**—This Article may be cited as the North Carolina Drug Authority Act. (1971, c. 922.)

ARTICLE 54.

North Carolina Council on State Goals and Policy Act.

§ **143-476. Short title.**—This Article shall be known as the North Carolina Council on State Goals and Policy Act of 1971. (1971, c. 838.)

§ **143-477. Council established.** — There is hereby established in the North Carolina Department of Administration the North Carolina Council on State Goals and Policy. (1971, c. 838.)

§ **143-478. Definition.**—In this Article "Council" shall mean the North Carolina Council on State Goals and Policy. (1971, c. 838.)

§ **143-479. Organization of the Council.** — (a) The members of the Council shall be appointed by the Governor and shall consist of 15 citizens whose background, training, and experience qualify them to survey the whole range of State needs, to propose State goals, and to recommend ways for State government to achieve these goals and to serve the interests of all citizens. The members of the Council shall be appointed for four-year terms. The terms shall be staggered with seven members appointed during the first year, five members in the second year and three members during the third year of each gubernatorial term of office. Service on the Council shall not be incompatible with the holding of any elective or appointive office as regulated by Article VI, § 9, of the Constitution of North Carolina.

(b) The Governor shall serve as Chairman of the Council and shall designate someone to serve as Chairman in his absence.

(c) Any vacancy occurring in the membership of the Council prior to the regular expiration of a term shall be filled by appointment by the Governor for the remainder of the unexpired term.

(d) The members of the Council who are not officers or employees of the State shall receive for their services the per diem and allowances prescribed by G.S. 138-5. (1971, c. 838.)

§ **143-480. Powers and duties.**—The Council shall have the following powers and duties:

(1) Express the needs and aspirations of North Carolina's citizens and identify the kind of future they want for themselves and their families in the form of goals proposed for State action along with a suggested timetable within which these goals might reasonably be achieved.

(2) Study the resources and means of action available to state government and recommend policies to guide the State in using these resources and means to achieve State goals and suggest short-run goals, consistent with the long-run goals, that should receive priority consideration within a three to five-year frame.

(3) Evaluate the present structure and activities of State government and recommend improvements in management and communication so that the State may pursue its chosen goals in an efficient and well-coordinated manner.

(4) Identify areas of public interest where needs are urgent or present policies inadequate and recommend appropriate study and analysis to provide a basis for evaluating alternative courses of action.

(5) Inform the general public of the main problems facing the State and involve the citizenry in the study and debate of State goals and policy.
(6) Submit a report to the Governor by November 30 of each year to guide him in preparing his "State of the State" message. (1971, c. 838.)

§ **143-481. The staff of the Council.**—The Department of Administration shall supply staff services to the Council. (1971, c. 838.)

§ **143-482. Information.**—Every agency or department of the Executive Branch of State government shall provide the Council, upon its request, with any information in the possession of the agency or department. (1971, c. 838.)

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ARTICLE 1.

General Provisions.

§ **143A-1. Short title.**—This Chapter shall be known and may be cited as the "Executive Organization Act of 1971." (1971, c. 864, s. 1.)

§ **143A-2. Head of department; defined.**—Whenever the term "head of the department" is used it shall mean the head of one of the principal departments created by this Chapter. (1971, c. 864, s. 1.)

§ **143A-3. Agency; defined.**—Whenever the term "agency" is used it shall mean and include, as the context may require, an existing department, institution, commission, committee, board, division, bureau, officer or official. (1971, c. 864, s. 1.)

§ **143A-4. Policy-making authority and administrative powers of Governor; delegation.**—The Governor, in accordance with Article III of the Constitution of North Carolina, shall be the chief executive officer of the State. Subject to the Constitution and laws of this State, the Governor shall be responsible for formulating and administering the policies of the executive branch of the State government. Where a conflict arises in connection with the administration of the policies of the executive branch of the State government with respect to the reorganization of State government, such conflict shall be resolved by the Governor, and the decision of the Governor shall be final. (1971, c. 864, s. 1.)

§ **143A-5. Office of the Lieutenant Governor.**—The Lieutenant Governor shall maintain an office in a State building in the City of Raleigh which office shall be open during normal working hours throughout the year. The Lieutenant Governor shall serve as President of the Senate and perform such additional duties as the Governor or General Assembly may assign to him. This section shall become effective January 1, 1973. (1971, c. 864, s. 1.)

§ **143A-6. Types of transfers.**—(a) Under this Chapter, a type I transfer means the transferring of all or part of an existing agency to a principal department established by this Chapter. When all or part of any agency is transferred to a principal department under a type I transfer, its statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, are transferred to the principal department.

When any agency, or part thereof, is transferred by a type I transfer to a principal department under the provisions of this Chapter, all its prescribed powers, duties, and functions, including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the head of the principal department into which the agency, or part thereof, has been transferred.

(b) Under this Chapter, a type II transfer means the transferring intact of an existing agency, or part thereof, to a principal department established by this Chapter. When any agency, or part thereof, is transferred to a principal department under a type II transfer, that agency, or part thereof, shall be administered under the direction and supervision of that principal department, but shall exercise all its prescribed statutory powers independently of the head of the principal department, except that under a type II transfer the management functions of any transferred agency, or part thereof, shall be performed under the direction and supervision of the head of the principal department.

(c) Whenever the term "management functions" is used it shall mean planning, organizing, staffing, directing, coordinating, reporting and budgeting. (1971, c. 864, s. 1.)

§ **143A-7. Agencies not enumerated; continuation.**—Any existing department, institution, board or commission not enumerated in this Chapter but established or created by the General Assembly shall continue to exercise all its powers, duties and functions. (1971, c. 864, s. 1.)

§ **143A-8. Internal organization of departments; allocation and reallocation of duties and functions; limitations.**—The Governor shall cause the administrative organization of each department to be examined with a view to promoting economy and efficiency. The Governor may reorganize and organize the principal departments and assign and reassign the duties and functions among the divisions and other units, division heads, officers, and employees; except as otherwise expressly provided by statute. When such changes affect existing law they must be submitted in accordance with Article III, Sec. 5 of the Constitution. The head of a principal department shall have legal custody of all books, papers, documents and other records of the department. The head of a principal department shall be responsible for the preparation and presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department. (1971, c. 864, s. 1.)

§ **143A-9. Appointment of officers and employees; salaries of department heads.**—Any provisions of law to the contrary notwithstanding, and subject to the provisions of the Constitution of the State of North Carolina, the head of a principal department, except those departments headed by elected officials who are constitutional officers, shall be appointed by the Governor and serve at his pleasure. The salary of the head of each of the principal departments, except in those departments headed by elected officials who are constitutional officers, shall be set by the Advisory Budget Commission on the recommendation of the Governor. Salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly.

The head of a principal department shall appoint the chief deputy or chief assistant and such chief deputy or chief assistant shall be subject to the State Personnel Act. Except where appointment by the Governor is prescribed by existing statute, the head of the principal department shall appoint the administrative head of each transferred agency and, subject to the provisions of the State Personnel Act, appoint all employees of each division, section or other unit under a principal department.

In establishing the position of secretary, and the supporting staff for the principal departments, the cost of such staff positions will be met insofar as possible by utilizing existing positions or funds available from vacant positions within agencies assigned to the principal departments. (1971, c. 864, s. 1.)

§ **143A-10. Governor; continuation of powers and duties; staff.**—All powers, duties and functions vested by law in the Governor or in the office of Governor are continued, except as otherwise provided by this Chapter.

The immediate staff of the Governor shall not be subject to the State Personnel Act; however, salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly. (1971, c. 864, s. 1.)

§ **143A-11. Principal departments.**—Except as otherwise provided by this Chapter, or the State Constitution, all executive and administrative powers, duties and functions, not including those of the General Assembly and the judiciary, previously vested by law in the several State agencies, are vested in the following principal offices or departments.

(1) Office of the Governor.
(2) Office of the Lieutenant Governor.
(3) Department of the Secretary of State.
(4) Department of State Auditor.
(5) Department of State Treasurer.
(6) Department of Public Education.
(7) Department of Justice.
(8) Department of Agriculture.
(9) Department of Labor.
(10) Department of Insurance.
(11) Department of Administration.
(12) Department of Transportation and Highway Safety.
(13) Department of Natural and Economic Resources.
(14) Department of Human Resources.
(15) Department of Social Rehabilitation and Control.
(16) Department of Commerce.

(17) Department of Revenue.
(18) Department of Art, Culture and History.
(19) Department of Military and Veterans' Affairs. (1971, c. 864, s. 1.)

§ **143A-12. Office of the Governor; creation.**—There is hereby created an office of the Governor. (1971, c. 864, s. 2.)

§ **143A-13. Office of the Lieutenant Governor; creation.**—There is hereby created an office of the Lieutenant Governor. (1971, c. 864, s. 3.)

§ **143A-14. Creation of new departments by executive order.**—All departments not now in existence which this Chapter directs to be created shall be made operative by executive order of the Governor; provided that all new departments shall be activated by executive order not later than July 1, 1972. (1971, c. 864, s. 21.)

§ **143A-15. Date of transfer of agencies into existing departments.**—The transfer of all agencies into departments of State government which now exist shall take place not later than October 1, 1971. (1971, c. 864, s. 21.)

§ **143A-16. Transfer of funds by Governor.**—To implement this Chapter, the Governor shall have authority to transfer all or a part of any appropriations or funds of an agency to the department to which such agency is transferred. (1971, c. 864, s. 21.)

§ **143A-17. Plans and reports.**—Each principal department shall submit an annual plan of work to the Governor and the Advisory Budget Commission prior to the beginning of each fiscal year. Each principal department shall submit an annual report covering programs and activities to the Governor and Advisory Budget Commission at the end of each fiscal year. These plans of work and annual reports shall be made available to the General Assembly.

These documents will serve as the base for the development of budgets for each principal department of State Government to be submitted to the Governor, Advisory Budget Commission and to the General Assembly for consideration and approval. (1971, c. 864, s. 21.)

Editor's Note — Session Laws 1971, c. 864, s. 21(4), provides: "(4) *Reports to General Assembly by secretary of new departments.* — Whenever the Governor activates any new department by executive order on or before July 1, 1972, it shall be the duty of the secretary of such department, on or before March 1, 1973, to file a written report with the Governor for transmittal to the General Assembly. Such report shall contain the secretary's recommendations with respect to legislation needed to further effectuate the department's statutory functions and to promote efficiency and economy within such department."

§ **143A-18. Additional funds for reorganization.**—When adequate funds to implement reorganization are not available from the budgets of the transferred agencies, the Governor and the Council of State may make other funds available for these purposes, not to exceed a total of five hundred thousand dollars ($500,000) per year for all departments created by this Chapter. (1971, c. 864, s. 21.)

ARTICLE 2.

Department of the Secretary of State.

§ **143A-19. Creation.**—There is hereby created a Department of the Secretary of State. The head of the Department of the Secretary of State is the Secretary of State. (1971, c. 864, s. 4.)

§ **143A-20. Secretary of State; powers and duties.**—The Secretary of State shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 4.)

§ 143A-21. Secretary of State; transfer of powers and duties to Department.—Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Secretary of State are transferred by a type I transfer to the Department of the Secretary of State. (1971, c. 864, s. 4.)

§ 143A-22. The State Board of Elections; transfer.—The State Board of Elections, as contained in Article 3 of Chapter 163 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of the Secretary of State. (1971, c. 864, s. 4.)

§ 143A-23. Notaries public; powers, duties and functions; transfer.—All of the powers, duties and functions of the Governor under G.S. 10-1 of the General Statutes are transferred by a type I transfer to the Department of the Secretary of State. (1971, c. 864, s. 4.)

ARTICLE 3.

Department of State Auditor.

§ 143A-24. Creation.—There is hereby created a Department of State Auditor. The head of the Department of the State Auditor is the State Auditor. (1971, c. 864, s. 5.)

§ 143A-25. State Auditor; powers and duties.—The State Auditor shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 5.)

§ 143A-26. State Auditor; transfer of powers and duties to Department.—Except as otherwise provided in the Constitution or by this Chapter, all powers, duties and functions of the State Auditor are transferred by a type I transfer to the Department of the State Auditor. (1971, c. 864, s. 5.)

§ 143A-27. North Carolina Firemen's Pension Fund; transfer.—The North Carolina Firemen's Pension Fund, as contained in Article 3 of Chapter 118 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Auditor. (1971, c. 864, s. 5.)

§ 143A-28. The Law-Enforcement Officers' Benefit and Retirement Fund; transfer.—The Law Enforcement Officers' Benefit and Retirement Fund, as contained in Article 12 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Auditor. (1971, c. 864, s. 5.)

§ 143A-29. State Board of Pensions; transfer.—The State Board of Pensions, as contained in Article 2 of Chapter 112 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Auditor. (1971, c. 864, s. 5.)

ARTICLE 4.

Department of State Treasurer.

§ 143A-30. Creation.—There is hereby created a Department of State Treasurer. The head of the Department of State Treasurer is the State Treasurer. (1971, c. 864, s. 6.)

§ 143A-31. State Treasurer; powers and duties.—The State Treasurer shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 6.)

§ 143A-32. State Treasurer; transfer of powers and duties to Department.—Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the State Treasurer are transferred by a type I transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-33. Local Government Commission; transfer. — The Local Government Commission, as contained in Article 1 of Chapter 159 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-34. Teachers' and State Employees' Retirement System; transfer.—The Teachers' and State Employees' Retirement System, and the board of trustees, as contained in Article 1 of Chapter 135 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-35. North Carolina Local Governmental Employees' Retirement System; transfer.—The North Carolina Local Governmental Employees' Retirement System, as contained in Article 3 of Chapter 128 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-36. Public Employees' Social Security Agency; powers, duties and functions; transfer.—All of the powers, duties and functions of the Public Employees' Social Security Agency as contained in Article 2 of Chapter 135 of the General Statutes and the laws of this State, are transferred by a type I transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-37. Legislative Retirement Fund; transfer.—The Legislative Retirement Fund, as provided for in G.S. 120-4.1 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-38. Tax Review Board; transfer.—The Tax Review Board, as created by G.S. 105-269.2 of the General Statutes and the laws of this State, is transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

ARTICLE 5.

Department of Public Education.

§ 143A-39. Creation.—There is hereby created a Department of Public Education. The head of the Department of Public Education is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IX, Sec. 4(1) of the Constitution. (1971, c. 864, s. 7.)

§ 143A-40. State Board of Education; powers and duties.—The State Board of Education shall have such powers and duties as are conferred on the Board by this Chapter, delegated to the Board by the Governor and conferred by the Constitution and laws of this State. (1971, c. 864, s. 7.)

§ 143A-41. State Board of Education; transfer of powers and duties to Department.—Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the State Board of Education are transferred by a type I transfer to the Department of Public Education. (1971, c. 864, s. 7.)

§ **143A-42. Superintendent of Public Instruction; transfer of office and Department of Public Instruction; powers and duties.**—The office of the Superintendent of Public Instruction, as provided for by Article III, Sec. 7, of the Constitution, and the Department of Public Instruction are hereby transferred to the Department of Public Education. The Superintendent of Public Instruction shall be the Secretary and chief administrative officer of the State Board of Education, and shall have such powers and duties as are conferred by the Constitution, by the State Board of Education, Chapter 115 of the General Statutes, and the laws of this State. (1971, c. 864, s. 7.)

§ **143A-43. Department of Community Colleges; transfer.**—The Department of Community Colleges, as contained in Chapter 115A of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Public Education. (1971, c. 864, s. 7.)

§ **143A-44. North Carolina Vocational Textile School; transfer.**—The North Carolina Vocational Textile School, and board of trustees, as contained in Article 6 of Chapter 115A of the General Statutes and the laws of this State, are hereby transferred by a type II transfer to the Department of Public Education. (1971, c. 864, s. 7.)

§ **143A-45. Interstate Compact for Education; rights, duties and privileges.**—All of the rights, duties and privileges of this State obtained as a party to the Interstate Compact for Education as contained in Article 43 of Chapter 115 of the General Statutes and the laws of this State, shall be supervised and administered by the Superintendent of Public Instruction. (1971, c. 864, s. 7.)

§ **143A-46. North Carolina Advancement School; transfer.** — The North Carolina Advancement School, as contained in Article 44 of Chapter 115 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Public Education. (1971, c. 864, s. 7.)

§ **143A-47. Interstate Agreement on Qualifications of Educational Personnel; rights, duties and privileges.**—All the rights, duties and privileges of this State obtained as a party to the Interstate Agreement on Qualifications of Educational Personnel as contained in Article 17A of Chapter 115 of the General Statutes and the laws of this State shall be supervised and administered by the Superintendent of Public Instruction. (1971, c. 864, s. 7.)

§ **143A-48. Textbook Commission; transfer.**—The Textbook Commission, as created by G.S. 115-206.3 and the laws of this State, is hereby transferred by a type I transfer to the Department of Public Education. (1971, c. 864, s. 7.)

ARTICLE 6.

Department of Justice.

§ **143A-49. Creation.**—There is hereby created a Department of Justice. The head of the Department of Justice is the Attorney General. (1971, c. 864, s. 8.)

§ **143A-49.1. Attorney General; powers and duties.** — The Attorney General shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 8.)

§ **143A-50. Attorney General; transfer of powers and duties to Department.**—Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Attorney General are transferred by a type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ **143A-51. State Bureau of Investigation; transfer.**—The State Bureau of Investigation, as contained in Article 4 of Chapter 114 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ **143A-52. Fire investigations; transfer.** — The duties of the Commissioner of Insurance with respect to the investigation of all fires, including forest fires, as contained in Article 1 of Chapter 69 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Justice; provided, however, that the duties of the Commissioner of Insurance with respect to the inspection of buildings, the removal of dangerous materials therefrom, hospital insurance, insurance regulation, and the preparation of annual reports, as contained in Chapters 57 and 58 of the General Statutes and G.S. 69-4 and G.S. 69-6, shall continue to be among the duties of the Commissioner of Insurance. (1971, c. 864, s. 8.)

§ **143A-53. General Statutes Commission; transfer.** — The General Statutes Commission as contained in Article 2 of Chapter 164 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ **143A-54. Company police; powers, duties and functions; transfer.**—All of the powers, duties and functions of the Governor contained in Chapter 74A of the General Statutes and the laws of this State relating to the appointment and commission of special police are hereby transferred by a type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ **143A-55. Police Information Network; transfer.**—The Police Information Network, as created by G.S. 114-10.1 and the laws of this State, is hereby transferred by a type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

ARTICLE 7.

Department of Agriculture.

§ **143A-56. Creation.**—There is hereby created a Department of Agriculture. The head of the Department of Agriculture is the Commissioner of Agriculture. (1971, c. 864, s. 9.)

§ **143A-57. Commissioner of Agriculture; powers and duties.**—The Commissioner of Agriculture shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 9.)

§ **143A-58. Commissioner of Agriculture; transfer of powers and duties to Department.**—Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Commissioner of Agriculture are transferred by a type I transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ **143A-59. Board of Agriculture; transfer.**—The Board of Agriculture, as contained in Article I of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ **143A-60. Structural Pest Control Division; transfer.**—The Structural Pest Control Division of the Department of Agriculture, as contained in Article 4C of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ **143A-61. The North Carolina Agricultural Hall of Fame; transfer.**—The North Carolina Agricultural Hall of Fame, as contained in Article 50B of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ **143A-62. Gasoline and Oil Inspection Board; transfer.**—The Gasoline and Oil Inspection Board, as contained in Article 3 of Chapter 119 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ **143A-63. North Carolina Rural Rehabilitation Corporation; transfer.**—The North Carolina Rural Rehabilitation Corporation, and board of directors, as contained in Chapter 137 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ **143A-64. North Carolina Board of Crop Seed Improvement; transfer.**—The North Carolina Board of Crop Seed Improvement, as contained in Article 30 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ **143A-65. North Carolina Public Livestock Market Advisory Board; transfer.**—The North Carolina Public Livestock Market Advisory Board, as contained in Article 35 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ **143A-66. State Museum; transfer.**—The State Museum of Natural History, as contained in G.S. 106-22 and the laws of this State, and the Museum of Natural History Advisory Commission, as contained in Article 40, Chapter 143 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

ARTICLE 8.

Department of Labor.

§ **143A-67. Creation.** — There is hereby created a Department of Labor. The head of the Department of Labor is the Commissioner of Labor. (1971, c. 864, s. 10.)

§ **143A-68. Commissioner of Labor; powers and duties.**—The Commissioner of Labor shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 10.)

§ **143A-69. Commissioner of Labor; transfer of powers and duties to Department.**—Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Commissioner of Labor are transferred by a type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

§ **143A-70. Board of Boiler Rules and Bureau of Boiler Inspection; transfer.**—The Board of Boiler Rules and the Bureau of Boiler Inspection, as contained in Article 7 of Chapter 95 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

§ **143A-71. Apprenticeship Council; transfer.** — The Apprenticeship Council, as contained in Chapter 94 of the General Statutes and the laws of this

State, is hereby transferred by a type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

§ **143A-72. Voluntary arbitration of labor disputes; appointment of arbitrator or panel; Commissioner of Labor; transfer.**—All of the powers, duties and functions of the Commissioner of Labor under Article 4A of Chapter 95 of the General Statutes and the laws of this State, are transferred by a type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

ARTICLE 9.

Department of Insurance.

§ **143A-73. Creation.**—There is hereby created a Department of Insurance. The head of the Department of Insurance is the Commissioner of Insurance. (1971, c. 864, s. 11.)

§ **143A-74. Commissioner of Insurance; powers and duties.** — The Commissioner of Insurance shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 11.)

§ **143A-75. Commissioner of Insurance; transfer of powers and duties to Department.**—Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested in the Commissioner of Insurance are transferred by a type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ **143A-76. Insurance advisory board; transfer.**—The insurance advisory board, as contained in Article 2 of Chapter 58 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ **143A-77. Health Insurance Advisory Board; transfer.**—The Health Insurance Advisory Board, as contained in Article 27A of Chapter 58 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ **143A-78. Building Code Council; transfer.**—The Building Code Council, as contained in Article 9 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ **143A-79. State Volunteer Fire Department; transfer.**—The State Volunteer Fire Department, as contained in Article 3 of Chapter 69 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

ARTICLE 10.

Department of Administration.

§ **143A-80. Creation.**—There is hereby created a Department of Administration. The head of the Department of Administration is the Secretary of the Department of Administration. (1971, c. 864, s. 12.)

§ **143A-81. Secretary of the Department of Administration; powers and duties.**—The Secretary of the Department of Administration shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 12.)

§ 143A-82. Department or Director of Administration; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested in the Department of Administration or in the Director of Administration under Chapter 129 and Articles 3, 3A and 36 of Chapter 143 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ 143A-83. Systems Management Division; transfer.—The Systems Management Division, as created by Executive Order No. 2, March 25, 1969, is transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ 143A-84. State Personnel Department; State Personnel Board; powers, duties and functions; transfer.—All the powers, duties and functions of the State Personnel Department and the State Personnel Board, as provided in Chapter 126 of the General Statutes and the laws of this State, are transferred by a type II transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ 143A-85. North Carolina Housing Corporation; transfer. — The North Carolina Housing Corporation, as contained in Chapter 122A of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ 143A-86. North Carolina Capital Building Authority; transfer.—The North Carolina Capital Building Authority, as contained in Article 7 of Chapter 129 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ 143A-87. North Carolina Capital Planning Commission; transfer.—The North Carolina Capital Planning Commission, as contained in Article 6 of Chapter 129 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ 143A-88. Youth Councils Act; Youth Advisory Board; State Youth Council; powers, duties and functions; transfer.—All of the powers, duties and functions of the Youth Advisory Board and the State Youth Council under Article 29C of Chapter 143 of the General Statutes and the laws of this State, are transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ 143A-89. North Carolina Zoological Authority; transfer. — The North Carolina Zoological Authority, and Board of Directors, as contained in Article 14 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ 143A-90. North Carolina Good Neighbor Council; transfer.—The North Carolina Good Neighbor Council, and Advisory Committee, as contained in Article 49 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

Editor's Note. — The Good Neighbor Council is now the Human Relations Commission. See § 143-416.

§ 143A-91. North Carolina Commission on Interstate Cooperation; transfer.—The North Carolina Commission on Interstate Cooperation, as contained in Article 15 of Chapter 143 of the General Statutes and the laws of this

State, is hereby transferred by a type II transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ **143A-92. State Construction Finance Authority; transfer.**—The State Construction Finance Authority, as contained in Article 8 of Chapter 129 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ **143A-93. Marine Science Council; transfer.**—The Marine Science Council, as created and provided for in Resolution 799, 1969 Session Laws, is hereby transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ **143A-94. Coordinating Committee of North Carolina State University and the State Department of Agriculture; transfer.**—The Coordinating Committee of North Carolina State University at Raleigh and the State Department of Agriculture, as created and contained in G.S. 116-35, G.S. 116-36, G.S. 116-37, and the laws of this State, is hereby transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ **143A-95. Southern Interstate Nuclear Compact; transfer.** — The Southern Interstate Nuclear Compact, as codified in Chapter 104D of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

§ **143A-96. The Commission on the Education and Employment of Women; transfer.**—The Commission on the Education and Employment of Women, as contained in Article 50 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Administration. (1971, c. 864, s. 12.)

ARTICLE 11.

Department of Transportation and Highway Safety.

§ **143A-97. Creation.**—There is hereby created a Department of Transportation and Highway Safety. The head of the Department of Transportation and Highway Safety is the Secretary of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-98. Secretary of Transportation and Highway Safety; powers and duties.**—The Secretary of the Department of Transportation and Highway Safety shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 13.)

§ **143A-99. State Highway Commission; transfer.**—The State Highway Commission, as contained in Chapter 136 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-100. Department of Motor Vehicles; transfer.**—The Department of Motor Vehicles, as contained in Chapter 20 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-101. Governor's Highway Safety Program; transfer.**—The Governor's Highway Safety Program, as established under authority of G.S. 147-12(10) and the laws of this State, is hereby transferred by a type I transfer to the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-102. North Carolina Traffic Safety Authority; transfer; chairman.**—The North Carolina Traffic Safety Authority, as contained in Article 44 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Transportation and Highway Safety. The chairman of the Authority shall be the Secretary of Transportation and Highway Safety. The Governor shall no longer be a member of the Authority. (1971, c. 864, s. 13.)

§ **143A-103. Board of Commissioners of Navigation and Pilotage for the Cape Fear River; transfer.**—The Board of Commissioners of Navigation and Pilotage for the Cape Fear River, as contained in Article 1 of Chapter 76 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-104. Governor's Aviation Committee; transfer.**—The Governor's Aviation Committee, as contained in G.S. 113-28.6(8) and the laws of this State, is hereby transferred by a type I transfer to the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-105. North Carolina Railroad Directors; transfer.**—The Directors of the North Carolina Railroad, appointed by the Governor under authority of G.S. 147-12(7), Chapter 82 of the Laws of the State of North Carolina of 1849, and the laws of this State, are hereby transferred by a type II transfer to the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-106. Atlantic and North Carolina Railroad Company; transfer.**—The Directors of the Atlantic and North Carolina Railroad Company, as contained in Chapter 136 of the Laws of North Carolina of the Session of 1852, and the laws of this State, are hereby transferred by a type II transfer to the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-107. State Ports Authority; transfer.**—The North Carolina State Ports Authority, as codified in Article 22 of Chapter 143 of the General Statutes and the laws of North Carolina, is hereby transferred by a type II transfer to the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

§ **143A-108. Vehicle Equipment Safety Compact; transfer.**—The Vehicle Equipment Safety Compact, as contained in Article 3C of Chapter 20 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Motor Vehicles in the Department of Transportation and Highway Safety. (1971, c. 864, s. 13.)

ARTICLE 12.

Department of Natural and Economic Resources.

§ **143A-109. Creation.**—There is hereby created a Department of Natural and Economic Resources. The head of the Department of Natural and Economic Resources is the Secretary of the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-110. Secretary of Natural and Economic Resources; powers and duties.**—The Secretary of the Department of Natural and Economic Resources shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 14.)

§ **143A-111. Geodetic Survey Division; transfer.**—The Geodetic Survey Division as codified in Chapter 102 of the General Statutes and the laws of this State, is transferred by a type I transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-112. North Carolina Board of Science and Technology; transfer.**—The North Carolina Board of Science and Technology, as codified in Article 42 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864 s. 14.)

§ **143A-113. North Carolina Forestry Advisory Committee; transfer.**—The North Carolina Forestry Advisory Committee, as contained in Article 2A of Chapter 113 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-114. Mining Council; transfer.**—The Mining Council, as contained in Chapter 74 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-115. Commercial and Sports Fisheries Advisory Board; transfer.**—The Commercial and Sports Fisheries Advisory Board, as contained in Article 18, Chapter 113 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-116. North Carolina National Park, Parkway and Forests Development Commission; transfer.**—The North Carolina National Park, Parkway and Forests Development Commission, as contained in Article 25 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-117. Department and Board of Conservation and Development; transfer.**—The Department of Conservation and Development and the Board of Conservation and Development, both as contained in Chapter 113 of the General Statutes and laws of this State, are hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-118. Wildlife Resources Commission; transfer.**—The Wildlife Resources Commission, as contained in Chapters 75A, 113 and 143 of the General Statutes and the laws of this State, is hereby transferred to the Department of Natural and Economic Resources. The Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural and Economic Resources and, other provisions of this Chapter notwithstanding, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting. Any other provisions of this Chapter to the contrary notwithstanding, the Executive Director of the Wildlife Resources Commission shall be appointed by the Commission, and the employees of the Commission shall be employed as now provided in G.S. 143-246 and the laws of this State. (1971, c. 864, s. 14.)

§ **143A-119. Department of Water and Air Resources; transfer.**—The Department of Water and Air Resources, as contained in Article 21 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-120. Board of Water and Air Resources; transfer.** — The Board of Water and Air Resources, as contained in G.S. 143-214 and the laws of this State, is hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-121. Water Control Advisory Council and Air Control Advisory Council; transfer.**—The Water Control Advisory Council and the Air Control Advisory Council, both as contained in G.S. 143-214(j) and the laws of this State, are hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-122. John H. Kerr Reservoir Development Commission; transfer.**—The John H. Kerr Reservoir Development Commission, as contained in Article 30 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-123. Lockhard Gaddy Wild Goose Refuge Commission; transfer.**—The Lockhard Gaddy Wild Goose Refuge Commission, as contained in Chapter 1171 of the 1953 Session Laws and the laws of this State, is hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-124. State Soil and Water Conservation Committee; transfer.**—The State Soil and Water Conservation Committee, as contained in Article 1 of Chapter 139 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971 c. 846, s. 14.)

§ **143A-125. North Carolina Water Safety Committee; transfer.**—The North Carolina Water Safety Committee, as contained in Article 2 of Chapter 75A of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-126. Atlantic States Marine Fisheries Compact; transfer.**—All the powers, duties and functions of the Governor and the Director of the Department of Conservation and Development under Article 19 of Chapter 113 of the General Statutes and the laws of this State with respect to the Atlantic States Marine Fisheries Compact, are hereby transferred by a type I transfer to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-127. Interstate Mining Compact; transfer.**—All the powers, duties and functions of the Governor under Article 5 of Chapter 74 of the General Statutes and the laws of this State with respect to the Interstate Mining Compact are hereby transferred to the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-128. Department of Local Affairs; transfer.**—The Department of Local Affairs as contained in Article 34 of Chapter 143 of the General Statutes is hereby transferred by a type I transfer to the Department of Conservation and Development in the Department of Natural and Economic Resources. (1971, c. 864, s. 14.)

§ **143A-129. Committee on Recreation; Committee on Law and Order; other committees of Department of Local Affairs.**—The Committee on Recreation and all other committees of the Department of Local Affairs, as contained in Article 34 of Chapter 143, except the Committee on Law and Order, shall continue to be committees of the Department but their duties and responsibilities shall be limited to developing and proposing policies, programs and activities in their respective areas.

The Committee on Law and Order shall be the State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the Law-Enforcement Assistance Administration of the U.S. Department of Justice. In respect to such grants, the Committee shall have authority to review, approve and maintain general oversight of the State plan and its implementation, including subgrants and allocations to local units of government. (1971, c. 864, s. 14.)

ARTICLE 13.

Department of Human Resources.

§ **143A-130. Creation.**—There is hereby created a Department of Human Resources. The head of the Department of Human Resources is the Secretary of Human Resources. (1971, c. 864, s. 15.)

§ **143A-131. Secretary of Human Resources; powers and duties.**—The Secretary of the Department of Human Resources shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 15.)

§ **143A-132. State Board of Health; transfer.**—The State Board of Health, as contained in Article 2 of Chapter 130 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-133. Salt Marsh Mosquito Advisory Commission; transfer.**—The Salt Marsh Mosquito Advisory Commission, as contained in Article 37 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-134. Office of Chief Medical Examiner; transfer.** — The office of Chief Medical Examiner, as contained in Article 21 of Chapter 130 of the General Statutes and the laws of this State, is hereby tranferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-135. State Department of Social Services; transfer.**—The State Department of Social Services, as created by G.S. 108-5 and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-136. State Board of Social Services; transfer.**—The State Board of Social Services, as contained in Article 1 of Chapter 108 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-137. Advisory committee for medical assistance; transfer.**—The advisory committee for medical assistance, as created by G.S. 108-61.1 and the laws of this State, is hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-138. State Department of Mental Health; transfer.**—The State Department of Mental Health, as contained in Article 1 of Chapter 122 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-139. State Board of Mental Health; transfer.**—The State Board of Mental Health, as created by G.S. 122-1.1 and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-140. Medical Advisory Council to the State Board of Mental Health; transfer.**—The Medical Advisory Council to the State Board of Mental Health, as contained in Article 11 of Chapter 35 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-141. Mental Health Council; transfer.**—The Mental Health Council, as contained in Article 14 of Chapter 122 of the General Statutes and the laws of this State is hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-142. Advisory Council on Alcoholism to the North Carolina Board of Mental Health; transfer.**—The Advisory Council on Alcoholism to the North Carolina Board of Mental Health, as contained in Article 15 of Chapter 122 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-143. State Advisory Council to the North Carolina Medical Care Commission; transfer.**—The State Advisory Council to the North Carolina Medical Care Commission, as authorized by G.S. 131-120 and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-144. North Carolina State Commission for the Blind; transfer.**—The North Carolina State Commission for the Blind, as contained in Article 1 of Chapter 111 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-145. Blind advisory committee; professional advisory committee; transfer.**—The blind advisory committee and the professional advisory committee, as created by G.S. 111-34 and the laws of this State, are hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-146. Vocational Rehabilitation Division; powers, duties and functions; transfer.**—All of the powers, duties and functions of the State Board of Education relating to vocational rehabilitation as set forth in Article 30 of Chapter 115 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-147. Eugenics Board of North Carolina; transfer.**—The Eugenics Board of North Carolina, as contained in Article 7 of Chapter 35 of the General Statutes, and as created by G.S. 35-40 and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-148. The Governor Morehead School; transfer.**—The Governor Morehead School, and board of directors, as contained in Article 40 of Chapter 115 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-149. The North Carolina School for the Deaf; the Eastern North Carolina School for the Deaf; transfer.**—The North Carolina School for the Deaf, located at Morganton, North Carolina, and the Eastern North Carolina School for the Deaf, located at Wilson, North Carolina, and board of directors, as contained in Article 41 of Chapter 115 of the General Statutes and the laws of this State, are hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-150. North Carolina Orthopedic Hospital; transfer.** — The North Carolina Orthopedic Hospital, and board of trustees, as contained in Article 1 of Chapter 131 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-151. North Carolina Cerebral Palsy Hospital; transfer.**—The North Carolina Cerebral Palsy Hospital, and board of directors, as contained in Article 14 of Chapter 131 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-152. North Carolina sanatoriums for the treatment of tuberculosis; transfer.**—All state-supported North Carolina sanatoriums for the treatment of tuberculosis, as provided for in Articles 7, 8, 9, 10 and 11 of Chapter 131 of the General Statutes and the laws of this State, are hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-153. Interstate Compact on Mental Health; rights, duties and privileges.**—All of the rights, duties and privileges of this State obtained as a party to the Interstate Compact on Mental Health, as contained in Article 13 of Chapter 122 of the General Statutes and the laws of this State, shall be supervised and administered by the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-154. Council on Mental Retardation and Developmental Disabilities; transfer.**—The Council on Mental Retardation and Developmental Disabilities, as contained in Article 12 of Chapter 35 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15; c. 976, s. 5.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, added "and Developmental Disabilities" to the title of the Council.

§ **143A-155. North Carolina Cancer Study Commission; transfer.**—The North Carolina Cancer Study Commission, as contained in Article 17A of Chapter 130 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-156. Interstate Compact on Juveniles; rights, duties and privileges.**—All of the rights, duties and privileges of this State obtained as a party to the Interstate Compact on Juveniles, as contained in Article 5 of Chapter 110 of the General Statutes and the laws of this State, shall be supervised and administered by the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-157. North Carolina Board of Anatomy; transfer.**—The North Carolina Board of Anatomy, as contained in Article 14 of Chapter 90 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-158. Governor's Coordinating Council on Aging; transfer.**—The Governor's Coordinating Council on Aging, as contained in Article 29B of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-159. Confederate Women's Home Association; transfer.** — The Confederate Women's Home Association, and board of directors, as contained in Article 1 of Chapter 112 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-160. Medical Care Commission; transfer.**—The Medical Care Commission, as contained in Article 13 of Chapter 131 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-161. Governor's Committee on Employment of the Handicapped; transfer.**—The Governor's Committee on Employment of the Handicapped, as contained in Article 29A of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

§ **143A-162. Human Resources Division; transfer.**—The Human Resources Division, created by the Department of Local Affairs, pursuant to Article 34 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Human Resources. (1971, c. 864, s. 15.)

Article 14.

Department of Social Rehabilitation and Control.

§ **143A-163. Creation.**—There is hereby created a Department of Social Rehabilitation and Control. The head of the Department of Social Rehabilitation and Control is the Secretary of Social Rehabilitation and Control. (1971, c. 864, s. 16.)

§ **143A-164. Secretary of Social Rehabilitation and Control; powers and duties.**—The Secretary of Social Rehabilitation and Control shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 16.)

§ **143A-165. State Department and Commission of Correction; transfer.**—The State Department and Commission of Correction, as contained in Chapter 148 of the General Statutes and the laws of this State, are hereby transferred by a type II transfer to the Department of Social Rehabilitation and Control. (1971, c. 864, s. 16.)

§ **143A-166. State Board of Juvenile Correction; transfer.**—The State Board of Juvenile Correction, as contained in Article 9 of Chapter 134 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Social Rehabilitation and Control. (1971, c. 864, s. 16.)

§ **143A-167. State Probation Commission; transfer.**—The State Probation Commission, as established by G.S. 15-201 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Social Rehabilitation and Control. (1971, c. 864, s. 16.)

§ **143A-168. Board of Paroles; transfer.**—The Board of Paroles, as contained in Article 4 of Chapter 148 of the General Statutes and laws of this State, is hereby transferred by a type II transfer to the Department of Social Rehabilitation and Control. (1971, c. 864, s. 16.)

§ **143A-169. Interstate Agreement on Detainers; rights, duties and privileges.**—All of the rights, duties and privileges of this State obtained as a party to the Interstate Agreement on Detainers as contained in Article 10 of Chapter 148 of the General Statutes and the laws of this State, shall be supervised and administered by the Secretary of Social Rehabilitation and Control. (1971, c. 864, s. 16.)

§ **143A-170. Uniform Act for Out-of-State Parolee Supervision; powers, duties and functions; transfer.**—All the powers, duties and functions of the Governor under Article 4A of Chapter 148 of the General Statutes and the laws of this State, with respect to the execution of compacts on behalf of this State with any of the United States for cooperative effort and mutual assistance in the prevention of crime and for other purposes, are transferred by a type I transfer to the Department of Social Rehabilitation and Control. (1971, c. 864, s. 16.)

ARTICLE 15.

Department of Commerce.

§ **143A-171. Creation.**—There is hereby created a Department of Commerce. The head of the Department of Commerce is the Secretary of Commerce. (1971, c. 864, s. 17.)

§ **143A-172. Secretary of Commerce; powers and duties.**—The Secretary of the Department of Commerce shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State, except that agencies transferred to the Department of Commerce shall have authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter. (1971, c. 864, s. 17.)

§ **143A-173. State Board of Alcoholic Control; transfer.**—The State Board of Alcoholic Control, as contained in Chapter 18 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

Editor's Note.—Chapter 18, referred to in this section, was repealed by Session Laws 1971, c. 872, s. 3, effective October 1, 1971. See now Chapter 18A.

§ **143A-174. Utilities Commission; transfer.**—The North Carolina Utilities Commission, as contained in Chapter 62 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

§ **143A-175. Employment Security Commission; transfer.**—The Employment Security Commission, as contained in Chapter 96 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

§ **143A-176. North Carolina Industrial Commission; transfer.**—The North Carolina Industrial Commission, as contained in Chapter 97 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

§ **143A-177. Commissioner of Banks; State Banking Commission; transfer.**—The Commissioner of Banks and the State Banking Commission, as contained in Chapter 53 of the General Statutes and the laws of this State, are hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

§ **143A-178. Savings and Loan Division; transfer.**—The Savings and Loan Association Division of the Department of Insurance, organized and operating under authority of Article 4 of Chapter 54 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. There shall be established in the Department of Commerce a Savings and Loan Association Division which shall be under the supervision of the Administrator of the Savings and Loan Division appointed by the Secretary of Commerce. (1971, c. 864, s. 17.)

§ **143A-179. Savings and Loan Advisory Board; transfer.**—The Savings and Loan Advisory Board, as provided for in G.S. 54-24.1 and other laws of this State, is hereby transferred by a type II transfer to the Department of Commerce, and the name of the Board wherever the same appears shall be changed to "The State Savings and Loan Commission." (1971, c. 864, s. 17.)

§ **143A-180. Credit Union Division of the Department of Agriculture; transfer.**—The Credit Union Division of the Department of Agriculture, as contained in Subchapter III of Chapter 54 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

§ **143A-181. Credit Union Commission.**—(a) There shall be created in the Department of Commerce a Credit Union Commission which shall consist of seven members. The Secretary of Commerce shall be ex officio a member of the Commission and serve as chairman of the Commission. On the initial Commission three members shall be appointed by the Governor for terms of two years and three members shall be appointed by the Governor for terms of four years. Thereafter all members of the Commission shall be appointed by the Governor for terms of four years. In the event of a vacancy on the Commission the Governor shall appoint a successor to serve for the remainder of the term. Three members of the Commission shall be persons who have had three years' or more experience as a Credit Union Director or in management of State chartered credit unions. No two persons on the Commission shall be residents of the same Senatorial District. No person on the Commission shall be on a board of directors or employed by another type of financial institution. The Commission shall meet at least every six months, or more often upon the call of the Secretary of Commerce or any three members of the Commission. A majority of the members of the Commission shall constitute a quorum. The members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this Chapter as prescribed in G.S. 138-5.

(b) The relationship between the Secretary of Commerce and the Credit Union Commission shall be as defined for a type II transfer under this Chapter.

(c) The Credit Union Commission is hereby vested with full power and authority to review, approve, or modify any action taken by the Administrator of Credit Unions in the exercise of all powers, duties, and functions vested by law in or exercised by the Administrator of Credit Unions under the Credit Union laws of this State. (1971, c. 864, s. 17.)

§ **143A-182. North Carolina Milk Commission; transfer.**—The North Carolina Milk Commission, as contained in Article 28B of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

§ **143A-183. North Carolina Burial Commissioner; transfer.**—The North Carolina Burial Commissioner, as contained in Article 24 of Chapter 58, Article 7 of Chapter 65 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

§ **143A-184. North Carolina Burial Commission; transfer.**—The North Carolina Burial Commission, as contained in Article 24 of Chapter 58 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

§ **143A-185. North Carolina Rural Electrification Authority; transfer.**—The North Carolina Rural Electrification Authority, as contained in Article 1 of Chapter 117 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Commerce. (1971, c. 864, s. 17.)

ARTICLE 16.

Department of Revenue.

§ **143A-186. Creation.**—There is hereby created a Department of Revenue. The head of the Department of Revenue is the Commissioner of Revenue. (1971, c. 864, s. 18.)

§ **143A-187. Commissioner of Revenue; powers and duties.**—The Commissioner of Revenue shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 18.)

§ **143A-188. Commissioner of Revenue; transfer of powers and duties to Department.**—Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested in the Department of Revenue or in the Commissioner of Revenue under Article 7 of Chapter 147, Chapter 105 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Revenue. (1971, c. 864, s. 18.)

§ **143A-189. Department of Tax Research; transfer.**—The Department of Tax Research, as contained in Article 37 of Chapter 105 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Revenue. (1971, c. 864, s. 18.)

§ **143A-190. State Board of Assessment; transfer.**—The State Board of Assessment, as contained in Article 12 of Chapter 105 of the General Statutes and the laws of this State, is transferred by a type II transfer to the Department of Revenue. (1971, c. 864, s. 18.)

ARTICLE 17.

Department of Art, Culture and History.

§ **143A-191. Creation.**—There is hereby created a Department of Art, Culture and History. The head of the Department of Art, Culture and History is the Secretary of Art, Culture and History. (1971, c. 864, s. 19.)

§ **143A-192. Secretary of Art, Culture and History; powers and duties.**—The Secretary of the Department of Art, Culture and History shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 19.)

§ **143A-193. State Department of Archives and History; transfer.**—The State Department of Archives and History, and Executive Board, as contained in Chapter 121 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-194. Historic Sites Advisory Committee; transfer.—The Historic Sites Advisory Committee, as created in G.S. 121-8.1 and the laws of this State, and as renamed "The North Carolina Advisory Council on Historic Preservation" in Chapter 480, 1971 Session Laws, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-195. North Carolina State Library; transfer. — The North Carolina State Library, and Board of Trustees, as contained in Article 1 of Chapter 125 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-196. Interstate Library Compact; rights, duties and privileges.—All of the rights, duties and privileges of this State obtained as a party to the Interstate Library Compact as contained in Article 2 of Chapter 125 of the General Statutes and the laws of this State, shall be supervised and administered by the Secretary of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-197. North Carolina Museum of Art; transfer. — The North Carolina Museum of Art, and Board of Trustees, as contained in Article 1 of Chapter 140 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-198. North Carolina State Art Society, Inc.; transfer.—The North Carolina State Art Society, Inc., and board of directors, as contained in Article 3 of Chapter 140 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-199. North Carolina Symphony Society, Inc.; transfer.—The North Carolina Symphony Society, Inc., and Board of Trustees, as contained in Article 2 of Chapter 140 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-200. State Art Museum Building Commission; transfer.—The State Art Museum Building Commission, as contained in Article 1A of Chapter 140 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-201. Library Certification Board; transfer. — The Library Certification Board, as created by G.S. 125-9 and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-202. Tryon's Palace Commission; transfer. — The Tryon's Palace Commission, as contained in Article 2 of Chapter 121 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-203. North Carolina Arts Council; transfer.—The North Carolina Arts Council, as contained in Article 47 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-204. U.S.S. North Carolina Battleship Commission; transfer.—The U.S.S. North Carolina Battleship Commission, as contained in Article 39 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-205. Memorials Commission; transfer. — The Memorials Commission, as contained in Article 1 of Chapter 100 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-206. Commission to Promote Plans for the Celebration of the Four Hundredth Anniversary of the Landing of Sir Walter Raleigh's Colony on Roanoke Island; transfer.—The Commission to Promote Plans for the Celebration of the Four Hundredth Anniversary of the Landing of Sir Walter Raleigh's Colony on Roanoke Island, as created by Resolution 43, 1955 Session Laws, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-207. Executive Mansion Fine Arts Commission; transfer.—The Executive Mansion Fine Arts Commission, as contained in Article 48 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-208. North Carolina American Revolution Bicentennial Commission; transfer.—The North Carolina American Revolution Bicentennial Commission, as contained in Article 45 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-209. North Carolina Awards Commission; transfer. — The North Carolina Awards Commission, as contained in Chapter 140A of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-210. Tobacco Museum Board; transfer.—The Tobacco Museum Board, as contained in Article 51 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-211. Roanoke Island Historical Association, Inc.; transfer.—The Roanoke Island Historical Association, Inc., as contained in Article 19 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-212. Sir Walter Raleigh Commission; transfer. — The Sir Walter Raleigh Commission, previously known as the Sir Walter Raleigh Day Commission, as created by Resolution 26, 1947 Session Laws, and as amended in Chapter 1267, 1953 Session Laws, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-213. Governor Richard Caswell Memorial Commission; transfer.—The Governor Richard Caswell Memorial Commission, as contained in Article 19A of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-214. Historic Swansboro Commission; transfer.—The Historic Swansboro Commission, as contained in Article 19B of Chapter 143 of the

General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-215. Edenton Historic Commission; transfer. — The Edenton Historic Commission, as created by Chapter 1009, 1961 Session Laws, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-216. Historic Bath Commission; transfer.—The Historic Bath Commission, as created by Chapter 353, 1965 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-217. Historic Hillsborough Commission; transfer. — The Historic Hillsborough Commission, as created by Chapter 196, 1963 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-218. John Motley Morehead Memorial Commission; transfer.—The John Motley Morehead Memorial Commission, as created by Chapter 1308, 1959 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-219. Historic Murfreesboro Commission; transfer. — The Historic Murfreesboro Commission, as created by Chapter 18, 1967 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-220. Charles B. Aycock Memorial Commission; transfer.—The Charles B. Aycock Memorial Commission, as created by Chapter 1021, 1949 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-221. Frying Pan Lightship Marine Museum Commission; transfer.—The Frying Pan Lightship Marine Museum Commission, as contained in Article 39A of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-222. Guilford County Bicentennial Commission; transfer.—The Guilford County Bicentennial Commission, as created by Chapter 548, 1967 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-223. Daniel Boone Memorial Commission; transfer. — The Daniel Boone Memorial Commission, as created by Chapter 496, Public Laws of 1909, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-224. Bennett Place Memorial Commission; transfer. — The Bennett Place Memorial Commission, as originally created by Chapter 77, Public Laws 1923, and as amended by Chapter 648, 1955 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ 143A-225. Durham-Orange Historical Commission; transfer.—The Durham-Orange Historical Commission, as created by Chapter 45, 1927 Public Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ **143A-226. Pitt County Historical Commission; transfer.**—The Pitt County Historical Commission, as created by Chapter 824, 1957 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ **143A-227. Transylvania County Historical Commission; transfer.**—The Transylvania County Historical Commission, as created by Chapter 1110, 1949 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ **143A-228. Lenoir County Historical and Patriotic Commission; transfer.**—The Lenoir County Historical and Patriotic Commission, as created by Chapter 757, 1949 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ **143A-229. Raleigh Historic Sites Commission; transfer.**—The Raleigh Historic Sites Commission, as created by Chapter 1058, 1967 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

§ **143A-230. Stonewall Jackson Memorial Fund; transfer.**—The Stonewall Jackson Memorial Fund, as created by Chapter 1371, 1957 Session Laws, and the laws of this State, is hereby transferred by a type II transfer to the Department of Art, Culture and History. (1971, c. 864, s. 19.)

ARTICLE 18.

Department of Military and Veterans' Affairs.

§ **143A-231. Creation.**—There is hereby created a Department of Military and Veterans' Affairs. The head of the Department of Military and Veterans' Affairs is the Secretary of Military and Veterans' Affairs. (1971, c. 864, s. 20.)

§ **143A-232. Secretary of Military and Veterans' Affairs; powers and duties.**—The Secretary of the Department of Military and Veterans' Affairs shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 20.)

§ **143A-233. Adjutant General's department; transfer.**—The Adjutant General's department, as contained in Article 2 of Chapter 127 of the General Statutes and laws of this State, is hereby transferred by a type I transfer to the Department of Military and Veteran's Affairs. (1971, c. 864, s. 20.)

§ **143A-234. State Civil Defense Agency; transfer.**—The State Civil Defense Agency, as contained in Chapter 166 of the General Statutes and laws of this State, is hereby transferred by a type I transfer to the Department of Military and Veterans' Affairs. (1971, c. 864, s. 20.)

§ **143A-235. State Civil Air Patrol; transfer.**—The State Civil Air Patrol, as contained in Chapter 167 of the General Statutes and laws of this State, is hereby transferred by a type II transfer to the Department of Military and Veterans' Affairs. (1971, c. 864, s. 20.)

§ **143A-236. Department and Board of Veterans' Affairs; transfer.**—The North Carolina Department and Board of Veterans' Affairs, as contained in Chapter 165 of the General Statutes and laws of this State, are hereby transferred by a type II transfer to the Department of Military and Veterans' Affairs. (1971, c. 864, s. 20.)

§ 143A-237. Armory Commission; transfer. — The North Carolina Armory Commission, as contained in Article 23 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Military and Veterans' Affairs. (1971, c. 864, s. 20.)

§ 143A-238. National Guard Mutual Assistance Compact; powers, duties and functions; transfer. — All the powers, duties and functions of the Governor under Article 14 of Chapter 127 of the General Statutes and the laws of this State with respect to the National Guard Mutual Assistance Compact, are hereby transferred by a type I transfer to the Department of Military and Veterans' Affairs. (1971, c. 864, s. 20.)

Chapter 145.

State Flower, Bird, Tree, Shell, Mammal and Fish.

Sec.
145-4. Scotch Bonnet adopted as official State shell.
145-5. State mammal.
145-6. Official State saltwater fish.

§ 145-4. Scotch Bonnet adopted as official State shell.—The Scotch Bonnet is hereby adopted as the official State shell of the State of North Carolina. (1965, c. 681.)

§ 145-5. State mammal. — The gray squirrel *(Sciurus carolinensis)* is hereby adopted as the official State mammal of the State of North Carolina. (1969, c. 1207.)

§ 145-6. Official State saltwater fish.—The Channel Bass (Red Drum) is hereby adopted as the official State saltwater fish of the State of North Carolina. (1971, c. 274.)

Chapter 146.

State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

Article 2.

Dispositions.

Sec.
146-6.1. Protection of marshes and tidelands.

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 6.

Acquisitions.

Sec.
146-22.1. Acquisition of property.
146-24.1. The power of eminent domain.
146-26.1. Relocation assistance.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of subchapter.

Editor's Note.—

For article on "Estuarine Land of North Carolina: Legal Aspect of Ownership, Use and Control," see 46 N.C.L. Rev. 779 (1968).

ARTICLE 2.

Dispositions.

§ 146-3. What lands may be sold.

Ownership of Foreshore Remains in State.—There is nothing in this section or § 146-64 to change the general rule that ownership of the foreshore remains in the State. On the contrary, it is noteworthy that a special class was created for the protection of the foreshore and the marginal seas. Therefore littoral rights do not include ownership of the foreshore. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

Local Act Controlling over Inconsistent Provision of Subdivision (1). — Session Laws 1963, c. 511, which granted the town of Carolina Beach title in reclaimed seashore lands down to the low-water mark controls over an inconsistent provision in subdivision (1) of this section which provides that State land under navigable waters cannot be conveyed in fee. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

Stated in Capune v. Robbins, 273 N.C. 581, 160 S.E.2d 881 (1968).

§ 146-6. Title to land raised from navigable water.

Applied in Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

§ 146-6.1. Protection of marshes and tidelands.—(a) Any person, firm, or corporation owning, leasing, or otherwise being in possession of power-operated earth moving equipment operating or to be operated in or on publicly owned tidelands, publicly owned beaches, publicly owned marsh lands, or navigable waters within the State shall register the same with the Department of Water Resources on or before October 1, 1967. Registration as herein provided shall also be required for power-operated equipment used in projects of hauling and placing materials of any sort in areas below the mean high tide. As used herein, the term power-operated earth moving equipment shall include, but not be limited to, dredges, draglines, bulldozers, motor graders, trucks and like equipment. Unregistered equipment may be used to supplement registered equipment in construction of approved projects.

(b) A registration number shall be assigned to each machine registered, which number shall be displayed in letters not less than six inches high on the top and side of each machine.

(c) Registration of equipment as provided herein shall be renewed annually. A fee of three dollars ($3.00) shall be charged for the registration of each machine, and a fee of three dollars ($3.00) shall be charged for each annual renewal. Revenue from registration fees shall be applied to the cost of administering this section, including, but not limited to, the employment of personnel and the purchase and operation of equipment and supplies.

(d) Any change of ownership of equipment registered under this section, whether by lease, sale, or other disposition shall be reported in writing to the Department of Water Resources or its successor, which report shall include the name and address of the person, firm or corporation to whom the transfer is made, and such person, firm or corporation shall within 10 days from the date of transfer, register such equipment with the Department of Water Resources as heretofore set forth.

(e) Nothing contained herein shall be construed to prevent use of any and all equipment for emergency use in repairing damage caused by hurricanes or like catastrophe, whether or not such equipment is registered and a permit issued as herein provided.

(f) The Department of Water Resources or its successor shall be responsible for the administration of this section.

(g) This section shall apply to all persons, firms, or corporations owning or operating earth moving equipment in publicly owned tidelands, publicly owned marsh lands and navigable waters within the State, excepting, however, equipment owned by the United States of America, the State of North Carolina or political subdivision thereof.

(h) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor.

(i) Any person, firm, or corporation aggrieved by any decision rendered under the provisions of this section may appeal therefrom as provided by chapter 143, article 33 of the General Statutes of North Carolina. (1967, c. 907.)

§ 146-12. Easements in lands covered by water.

Quoted in Capune v. Robbins, 273 N.C. 581, 160 S.E.2d 881 (1968).

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 6.

Acquisitions.

§ 146-22. All acquisitions to be made by Department of Administration.

The procedures for acquisition to the time of condemnation are governed by this Article, while the condemnation, if required, is regulated by Article 9 of Chapter 136. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

No Carte Blanche to Condemn Property.—Where plaintiff argued that § 146-22 et seq. and § 143-341 (4) d give Department (with the approval of the Governor and Council of State) carte blanche to condemn property, the Supreme Court held that the wording of the statutes, their legislative history, and the actualities of political and economic life make it clear that the General Assembly did no such thing. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Power of Eminent Domain Not Impliedly Granted.—By § 146-22 et seq. the legislature merely appointed the Department of Administration as acquisition agent and established the procedure it should follow in acquiring land. A statute which merely sets forth a mode of procedure will not impliedly grant the power of eminent domain. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The Department can only effect the condemnations which the legislature authorizes. It may not decide the public purpose or initiate the project for which the State's power of eminent domain may be used. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Steps Required for Acquisition of Land by Purchase or Condemnation.—Section 146-22 et seq. provides that all acquisitions of land by the State or any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. Before the Department can acquire land by purchase or condemnation the following steps must be taken: (1) The agency must file with the Department an application setting forth its need for the requested acquisition. (2) The Department "must investigate all aspects of the requested acquisition" (including the availability of the necessary funds) as detailed in § 146-23. (3) After investigation, the Department must determine that the best interests of the State require that the land be acquired. (4) The Department must then negotiate with the owners for the purchase. If terms are agreed upon and the Governor and Council of State approve them, the Department buys the land. (5) If negotiations are unsuccessful and the Governor and Council of State give permission, the Department institutes condemnation proceedings as provided in § 146-24 and § 136-103. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

§ **146-22.1. Acquisition of property.**—In order to carry out the duties of the Department of Administration as set forth in chapters 143 and 146 of the General Statutes, the Department of Administration is authorized and empowered to acquire by purchase, gift, condemnation or otherwise:

(1) Lands necessary for the construction and operation of State buildings and other governmental facilities.

(2) Lands necessary for construction and operation of parking facilities.

(3) An area in the city of Raleigh bounded by Edenton Street, Person Street, Peace Street, the right-of-way of the main line of Seaboard Coast Line Railway and North McDowell Street for the expansion of State governmental facilities, the public interest in, public use of, and the necessity for the acquisition of said area, being hereby declared as a matter of legislative determination.

(4) Lands necessary for the location, expansion, operation and improvement of hospital and mental health facilities and similar institutions maintained by the State of North Carolina.

(5) Lands necessary for public parks and forestry purposes.

(6) Lands involving historical sites, together with such adjacent lands as may be necessary for their preservation, maintenance and operation.

(7) Lands necessary for the location, expansion and improvement of any educational, penal or correctional institution.

(8) Lands necessary to provide public access to the waters within the State.

(9) Lands necessary for agricultural, experimental and research facilities.

(10) Utility and access easements, rights-of-way, estates for terms of years or fee simple title to lands necessary or convenient to the operation of state-owned facilities.

(11) Lands necessary for the development and preservation of the estuarine areas of the State.

(12) Lands necessary for the development of waterways within the State. (1969, c. 1091, s. 1.)

No request from a State agency is necessary under present law in order for the Department of Administration to acquire property "by purchase, gift, condemnation or otherwise" for certain authorized purposes. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ **146-23. Agency must file statement of needs; Department must investigate.**—Any State agency desiring to acquire land, whether by purchase, condemnation, lease, or rental, shall file with the Department of Administration an application setting forth its needs, and shall furnish such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the requested acquisition, including the existence of actual need for the requested property on the part of the requesting agency; the availability of land already owned by the State or by any State agency which might meet the requirements of the requesting agency; the availability, value, and status of title of other land, whether for purchase, condemnation, lease, or rental, which might meet the requirements of the requesting agency; and the availability of funds to pay for land if purchased, condemned, leased, or rented. The Department of Administration may make acquisitions at the request of the Governor and Council of State upon compliance with the investigation herein required. (1957, c. 584, s. 6; G. S., s. 146-104; 1959, c. 683, s. 1; 1969, c. 1091, s. 2.)

Editor's Note.—The 1969 amendment added the last sentence.

Stated in State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 146-24. Procedure for purchase or condemnation.

(c) If negotiations for the purchase of the land are unsuccessful, or if the State cannot obtain a good and sufficient title thereto by purchase from the owners, then the Department of Administration may request permission of the Governor and Council of State to exercise the right of eminent domain and acquire any such land by condemnation in the same manner as is provided for the State Highway Commission by article 9 of chapter 136 of the General Statutes. Upon approval by the Governor and Council of State, the Department may proceed to exercise the right of eminent domain. Approval by no other State agency shall be required as a prerequisite to the exercise of the power of eminent domain by the Department. (1957, c. 584, s. 6; G. S., s. 146-105; 1959, c. 683, s. 1; 1967, c. 512, s. 1.)

Editor's Note.—The 1967 amendment substituted "same manner as is provided for the State Highway Commission by article 9 of chapter 136 of the General Statutes" for "manner prescribed by chapter 40 of the General Statutes" in the first sentence of subsection (c). Section 3, Session Laws 1967, c. 512, provides that the act shall not apply to pending litigation.

As subsections (a) and (b) were not changed by the amendment, they are not set out.

Strict Construction.—In construing statutes which are claimed to authorize the exercise of the power of eminent domain, a strict rather than a liberal construction is the rule. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Power of Eminent Domain Is Prerogative of Sovereign State.—The right to take private property for public use, the power of eminent domain, is one of the prerogatives of a sovereign state. The right is inherent in sovereignty; it is not conferred by constitutions. Its exercise, however, is limited by the constitutional requirements of due process and payment of just compensation for property condemned. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The right of eminent domain must be conferred by statute, either in express words or by necessary implication. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The right of eminent domain lies dormant in the State until the legislature, by statute, confers the power and points out the occasion, mode, conditions and agencies for its exercise. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Only the legislative branch can authorize the exercise of the power of eminent domain and prescribe the manner of its use. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The executive branch of the government cannot, without the authority of some statute, proceed to condemn property for its own uses. Once authority is given to exercise the power of eminent domain, the matter ceases to be wholly legislative. The executive authorities may then decide whether the power will be invoked and to what extent, and the judiciary must decide whether the statute authorizing the taking violates any constitutional rights; and the fixing of the compensation is wholly a judicial question. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The procedures for acquisition to the time of condemnation are governed by this Article, while the condemnation, if required, is regulated by Article 9 of Chapter 136. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

That Acquisition Is in Best Interest of State Inferred.—This section does not require a specific written report that the acquisition is in the best interest of the State, and where the Department did in fact proceed to acquire the land, it was a permissible inference that such a determination was made. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ **146-24.1. The power of eminent domain.**—In carrying out the duties and purposes set forth in chapters 143 and 146 of the General Statutes, the Department of Administration is vested with the power of eminent domain and shall have the right and power to acquire such lands, easements, rights-of-way or estates for years by condemnation in the manner prescribed by G.S. 146-24 of the General Statutes. The power of eminent domain herein granted is supplemental to and in addition to the power of eminent domain which may be now or hereafter vested in any State agency as defined by G.S. 146-64 and the Department of Administration may exercise on behalf of such agency the power vested in said agency or the power vested in the Department of Administration herein; and the Department of Administration may follow the procedure set forth in G.S. 146-24 or the procedure of such agency, at the option of the Department of Administration. Where such acquisition is made at the request of an agency, such agency shall make a determination of the necessity therefor; where such acquisition is on behalf of the State or at the request of the Department of Administration, such findings shall be made by the Director of Administration. Provided, however, that all such acquisitions shall have the approval of the Governor and Council of State as provided in G.S. 146-24.

This section shall not apply to public projects and condemnations for which specific statutory condemnation authority and procedures are otherwise provided. (1969, c. 1091, ss. 3, 4.)

§ **146-26.1. Relocation assistance.**—In the acquisition of any real property by the Department of Administration for a public use, the Department of Administration shall be vested with the same authority as is given the State Highway Commission in Article 13 of Chapter 136 of the General Statutes. (1971, c. 540.)

ARTICLE 7.

Dispositions.

§ 146-27. All sales, leases, and rentals to be made by Department of Administration.

Cross Reference. — As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see § 160-61.2.

ARTICLE 8.

Miscellaneous Provisions.

§ 146-36. Acquisitions for and conveyances to federal government.

This section confers no power of eminent domain. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-64. Definitions.

(3) "Land" means real property, buildings, space in buildings, timber rights,

mineral rights, rights-of-way, easements, options, and all other rights, estates, and interests in real property.

(1969, c. 1164.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, inserted "options" in subdivision (3). As the rest of the section was not changed by the amendment, only subdivision (3) is set out.

Ownership of Foreshore Remains in State.—There is nothing in this section or § 146-3 to change the general rule that ownership of the foreshore remains in the State. On the contrary, it is noteworthy that a special class was created for the protection of the foreshore and the marginal seas. Therefore, littoral rights do not include ownership of the foreshore. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

§ 146-70. Institution of land actions by the State.

Quoted in State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

ARTICLE 17.

Title in State.

§ 146-79. Title presumed in the State; tax titles.

In Action by State Title Is Taken to Be in State.—In an action instituted by the State of North Carolina to remove cloud on title to a tract of coastal marshland title to the lands in controversy shall be taken to be in the State unless and until the other party shall show that he has a good and valid title to such lands in himself. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Defendants must carry the burden of proof by showing a connected chain of title from the sovereign to them for the identical lands claimed by them. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

And Failure to Meet Burden Vests Title in State.—Where defendants failed to show they had a good and valid title to the subject land in themselves, and the identity and location of the subject land having been established by stipulation, as between the State of North Carolina and defendants, this section vested title in the State, and the court erred in submitting the issue to the jury, the question for decision being a matter of law for the court. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Chapter 147.

State Officers.

Article 2.

Expenses of State Officers and State Departments.

Sec.
147-9.1. Municipalities and counties exempt.

Article 2A.

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147-36.1. Deputy secretary of State.
147-40. [Repealed.]
147-43.1 to 147-43.3. [Repealed.]
147-45. Distribution of copies of State publications.
147-48. Sale of Laws and Journals.
147-51. Clerks of superior courts responsible for Appellate Division Reports; lending prohibited.

ARTICLE 2.

Expenses of State Officers and State Departments.

§ 147-8. Mileage allowance to officers or employees using public or private automobiles.

Local Modification.—Lee: 1967, c. 58, s. 1; Mecklenburg: 1965, c. 240, s. 1.

§ 147-9. Unlawful to pay more than allowance.

Local Modification.—Lee 1967 c. 58, s. 2; Mecklenburg: 1965, c. 240, s. 2.

§ 147-9.1. Municipalities and counties exempt.—Nothing in this article shall be deemed to be applicable to counties or municipalities or to limit or restrict the amount of any automobile mileage allowance, or automobile expense allowance, or any other travel expense allowance or payment which may be paid by a county or municipality or by any board, commission, or other agency of any county or municipality. (1967, c. 941; 1969, c. 180, s. 2.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, included counties in this section.

ARTICLE 2A.

Annuities for State Employees.

§ 147-9.2. Definitions.—The following words when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

(1) "Chief executive officer" shall mean the person or group of persons responsible for the administration of any department or agency of the State of North Carolina, or of a wholly owned institution or instrumentality thereof, or an agent of such chief executive officer duly au-

thorized to enter into the contracts with State employees referred to in G.S. 147-9.3 and 147-9.4.

(2) "Employee" shall mean a permanent employee of the State of North Carolina, or if [of] any of its departments or agencies, or of any of its wholly owned institutions and instrumentalities.

(3) "Employer" shall mean the State of North Carolina, its departments and agencies, and its wholly owned institutions and instrumentalities. (1971, c. 433, s. 1.)

§ **147-9.3. Annuity contracts; salary deductions.**—Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision of law relating to salaries or salary schedules of State employees, if the employee be one described in Sec. 403(b) (1) (A) (i) or (ii) of the United States Internal Revenue Code, the chief executive officer of such employee, on behalf of the employer, may enter into an annual contract with the employee which provides for a reduction in salary below the total established compensation or salary schedule for a term of one year. The chief executive officer shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective. The agreement for salary reduction referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prescribed by him. Notwithstanding any other provision of law, the amount by which the salary of an employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any. (1971, c. 433, s. 2.)

§ **147-9.4. Deferred compensation plan.**—Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision of law relating to salaries or salary schedules of State employees, the chief executive officer of an employee, on behalf of the employer, may enter into an annual contract with an employee under which the employee irrevocably elects to defer receipt of a portion of his following year's scheduled salary, but only if, as a result of such contract, the income so deferred is not constructively received by the employee in the year in which it was earned, for federal income tax purposes. In addition, the income so deferred must be used to purchase an annuity or retirement income contract for the benefit of said employee, or to purchase shares in mutual funds for his benefit. An employee who has agreed to a deferred compensation plan for this purpose shall not have the right to receive the income so deferred in cash or in any way other than as provided above. Funds used for the purchase of an annuity or retirement income contract or mutual fund shares shall not be in lieu of any amount earned by the employee before his election to defer compensation has become effective. The agreement to defer income referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prepared by him. Notwithstanding any other provisions of law, the amount by which the salary of an employee is deferred pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any. (1971, c. 433, s. 3.)

ARTICLE 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.—The salary of the Governor shall be thirty-five thousand dollars ($35,000.00) per annum, payable monthly. He shall be paid annually the sum of five thousand dollars ($5,000.00) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1.)

Editor's Note.—

The 1965 amendment, effective Jan. 1, 1969, increased the annual salary from $25,000.00 to $35,000.00. Section 2 of the act provides: "There is hereby appropriated from the general fund of the State each fiscal year such sum or sums of money as may be necessary to carry out the provisions of this act."

Amendment Effective in January, 1973.—Session Laws 1971, c. 1083, s. 1, will substitute "thirty-eight thousand five hundred dollars ($38,500.00)" for "thirty-five thousand dollars ($35,000.00)" in the first sentence.

Session Laws 1971, c. 1083, s. 3, provides: "This act shall be in full force and effect on such date in January of 1973 as the Governor takes office."

§ 147-12. Powers and duties of Governor.

(10) He is hereby empowered to contract in behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, he shall coordinate the activities of any and all departments and agencies of this State and its subdivisions relating thereto. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C. S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253.)

Editor's Note.—

The 1967 amendment added subdivision (10).

As the rest of the section was not changed by the amendment, only subdivision (10) is set out.

State Government Reorganization.—The Directors of the North Carolina Railroad were transferred to the Department of Transportation and Highway Safety by § 143A-105, enacted by Session Laws 1971, c. 864.

The Governor's authority with regard to the Federal Highway Safety Act of 1966 was transferred to the Department of Transportation and Highway Safety by § 143A-101, enacted by Session Laws 1971, c. 864.

§ 147-13. May convene Council of State; quorum; journal.—(a) The Governor may convene the Council for consultation whenever he may deem it proper. In all meetings of the Council of State, five members exclusive of the Governor shall constitute a quorum.

(b) The advice and proceedings of the Council of State shall be entered in a journal, to be kept for this purpose exclusively and signed by all members present. Any member of the Council may have entered in the journal his dissent to any part of the journal. The journal shall be maintained by the Governor and shall be placed before the General Assembly when called for by either house. (1868-9, c. 270, s. 40; Code, s. 3335; Rev., s. 5329; C. S., s. 7637; 1971, cc. 32, 151.)

Editor's Note.—The first 1971 amendment, effective July 1, 1971, added the second sentence in this section.

The second 1971 amendment, effective July 1, 1971, designated the former section as subsection (a) and added subsection (b). In subsection (a) the amendment substituted "the" for "his" preceding "Council" in the first sentence.

Neither amendment gave effect to the other, but both have been given effect in this section as set out above.

§ **147-13.1. Governor's power to consolidate State agencies.**—(a) The Governor is hereby authorized to direct the inauguration of studies to determine which agencies of the State conduct operations which are so nearly related to the operations of one or more other agencies that a consolidation would produce the same or a more efficient operational result at a reduction in cost, and to prepare recommendations to be presented to the 1971 General Assembly to effect such consolidations.

(b) For purposes of conducting the study, the Governor is authorized to utilize funds available to him from private sources, or from federal or other governmental grants, to be matched, as may be required, by funds available within the existing Department of Administration budget.

(c) The Governor shall direct that agencies which should be consolidated with or absorbed into other agencies having similar responsibilities and duties, as determined by the outcome of the study, shall be so consolidated or absorbed when, in his opinion, efficiency in State governmental operations will be increased thereby, or when such consolidation will result in a reduction in the cost of administering State activities without a reduction in the effectiveness of such operations; provided, however, that the Governor shall not direct such consolidation or combination as would diminish the duty or authority of any State agency or institution created by act of the General Assembly. (1969, c. 1209, ss. 1-3.)

Editor's Note.—Session Laws 1969, c. 1209, s. 5, makes the act effective July 1, 1971.

§ **147-15.1. Fees collected by private secretary.**—The secretary to the Governor shall charge and collect the following fees, to be paid by the person for whom the services are rendered: for the commission of a notary public, ten dollars ($10.00); for the commission of a special policeman, five dollars ($5.00). All fees collected by the secretary shall be paid into the State treasury. (1961, c. 738, s. 2; 1969, c. 563, s. 2.)

Editor's Note. — The 1969 amendment, effective Sept. 1, 1969, increased the fee for the commission of a notary public from $7.50 to $10.00.

§ **147-16.1. Publication of executive orders.**—Executive orders of the Governor which have the force of law may be printed as an appendix to the Session Laws of North Carolina. The Governor's office may transmit any such executive orders to the Legislative Services Officer who shall cause them to be printed with the Session Laws. (1971, c. 1196.)

§ **147-17. May employ counsel in cases wherein State is interested.**—(a) No department, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except with the approval of the Governor. In any case or proceeding, civil or criminal, in or before any court or agency of this State or any other state or the United States, or in any other matter in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and may fix the compensation for their services.

(b) The Attorney General shall be counsel for all departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State. Whenever the Attorney General shall advise the Governor that it is impracticable for him to render legal services to any State agency, institution, commission, bureau or other organized activity, or to defend a State employee or former employee as authorized by article 31A of chapter 143 of the General Statutes, the Governor may authorize the employment of such counsel, as in his judgment, should be employed to render such services, and may fix the compensation for their services.

(c) The Governor may direct that the compensation fixed under this section for special counsel shall be paid out of appropriations or other funds credited to the appropriate department, agency, institution, commission, bureau, or other organized activity of the State or out of the Contingency and Emergency Fund. (1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; Code, ss. 3320, 3324; 1901, c. 744; Rev., s. 5332; C. S., s. 7640; 1925, c. 207, s. 3; 1961, c. 1007; 1963, c. 1009; 1967, c. 1092, s. 2.)

Cross Reference.—As to defense of State employees, see §§ 143-300.2 to 143-300.5.

Editor's Note.—

The 1967 amendment rewrote this section.

§ **147-26. To procure great seal of State; its description.**—The Governor shall procure for the State a seal, which shall be called the great seal of the State of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half-fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand. Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of grain in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out.

The background on the seal shall contain a depiction of mountains running from left to right to the middle of the seal and an ocean running from right to left to the middle of the seal. A side view of a three-masted ship shall be located on the ocean and to the right of Plenty. The date "May 20, 1775" shall appear within the seal and across the top of the seal and the words "esse quam videri" shall appear at the bottom around the perimeter. The words "THE GREAT SEAL of the STATE of NORTH CAROLINA" shall appear around the perimeter. No other words, figures or other embellishments shall appear on the seal.

It shall be the duty of the Governor to file in the office of Secretary of State an impression of the great seal, certified to under his hand and attested by the Secretary of State, which impression so certified the Secretary of State shall carefully preserve among the records of his office. (1868-9, c. 270, s. 35; 1883, c. 392; Code, ss. 3328, 3329; 1893, c. 145; Rev., s. 5339; C. S., s. 7646; 1971, c. 167, s. 1.)

Editor's Note. — The 1971 amendment, effective Jan. 1, 1972, substituted "grain" for "wheat" in the second sentence of the first paragraph, deleted "there shall also be inserted thereon the words 'esse quam videri'" at the end of that sentence, added the second paragraph, and made the former last sentence of the first paragraph into the third paragraph.

Session Laws 1971, c. 167, s. 1.1, provides: "This act shall not invalidate any Seal presently on display or heretofore used."

The Great Seal of the State of North Carolina.—See opinion of Attorney General to Dr. H.G. Jones, Department of Archives and History, 41 N.C.A.G. 214 (1971).

§ **147-31.1. Office space and expenses for Governor-elect and Lieutenant Governor-elect.**—The Department of Administration, upon request of the Governor-elect and Lieutenant Governor-elect, made after the general election for these respective offices, is empowered and directed to provide suitable office space and office staff for each such official for the period between the general election and inauguration.

The Department of Administration shall provide, for the fiscal years in which general election and inauguration of the Governor and Lieutenant Governor shall occur, such sums, not in excess of three thousand five hundred dollars ($3,500.00) for the Governor-elect, and not in excess of one thousand five hundred dollars ($1,500.00) for the Lieutenant Governor-elect, as may be necessary for the salary of the staffs and the payment of office expenses of each such official during such interim. (1965, c. 407.)

§ 147-33. Compensation and expenses of Lieutenant Governor.—As authorized by article III, § 11, of the Constitution of North Carolina, the salary of the Lieutenant Governor is hereby fixed at five thousand dollars ($5,000.00) per year, which amount shall be in addition to the compensation for the Lieutenant Governor as the presiding officer of the Senate, provided by article II, § 28, of the Constitution of North Carolina. Whenever the Lieutenant Governor shall attend any meeting of State officials, or other meetings which by law he is required to attend, he shall be paid his necessary traveling expenses in going to and from such meetings. From and after the time that the Lieutenant Governor shall take the oath of office and begin serving the term for which he was elected in 1952, he shall be paid an annual expense allowance in the sum of four thousand dollars ($4,000.00). If there is no Lieutenant Governor, the salary and expense allowance provided herein shall be paid to the presiding officer of the Senate. (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050; 1967, c. 1170, s. 1.)

Editor's Note.—

The 1967 amendment increased the salary of the Lieutenant Governor from two thousand one hundred dollars to five thousand dollars and his annual expense allowance from three thousand dollars to four thousand dollars. Section 3 of the 1967 amendatory act provides that the act shall be in full force and effect on such date in January of 1969 as the Lieutenant Governor and other constitutional officers take office.

The references to the Constitution in this section are to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. III, § 6, and Art. II, § 16, respectively.

Amendment Effective January 1, 1973.—Session Laws 1971, c. 913, effective Jan. 1, 1973, rewrites this section so that it will read:

"**§ 174-33. Compensation and expenses of Lieutenant Governor.**—As authorized by Article III, Section 6, of the Constitution of North Carolina, the salary of the Lieutenant Governor is hereby fixed at thirty thousand dollars ($30,000) per year. In addition to this salary, the Lieutenant Governor shall be paid an annual expense allowance in the sum of four thousand dollars ($4,000)."

ARTICLE 4.

Secretary of State.

§ 147-35. Salary of Secretary of State.—The salary of the Secretary of State shall be twenty-five thousand dollars ($25,000.00) a year, payable monthly. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C. S., s. 3863; Ex. Sess. 1920, s. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1.)

Editor's Note.—

Both 1967 amendments increased the salary from $18,000 to $20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary from $20,000 to $22,500.

The 1971 amendment, effective July 1, 1971, increased the salary from $22,500 to $25,000.

§ 147-36. Duties of Secretary of State.—It is the duty of the Secretary of State:

(1) To attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to perform such other duties as may then be devolved upon him by resolution of the two Houses, or either of them;

(2) To attend the Governor, whenever required by him, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes and the legislative journals;

(5) To distribute the acts of Congress received at his office in the manner prescribed for the statutes of the State;

(6) To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered, a receipt for the same; but he may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;

(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;

(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;

(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;

(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;

(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed; and

(13) To receive and keep all oaths of public officials required by law to be filed in his office, and as Secretary of State, he is fully empowered to administer official oaths to any public official of whom an oath is required. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C. S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543; 1967, c. 691, s. 53.)

Editor's Note.—

Prior to the 1967 amendment, effective July 1, 1967, subdivision (4) read "To distribute annually the statutes, the legislative journals and the reports of the Supreme Court."

§ 147-36.1. Deputy secretary of State.—The duly classified deputy secretary of State as reflected by the records of the State Department of Personnel, appointed by the Secretary of State to aid him in the discharge of his duties, shall have the authority to perform all acts and duties of the office in the absence of his chief, or in the case of his inability to act, or under his direction. In exercising such authority, certificates relating to documents and other filings, shall be issued in the name of the Secretary of State, printed, typed, stamped or facsimile signature, and signed by the deputy secretary of State.

Employees in the office of the Secretary of State designated as deputy or director of specific divisions in the Department, are empowered to issue certificates relating to documents and other filings within the scope of their division. In exercising such authority the certificates shall be issued in the name of the Secretary of State, printed, typed, stamped or facsimile signature, and signed by the deputy or director indicating his approved title. (1967, c. 1265.)

§ 147-40: Repealed by Session Laws 1969, c. 1184, s. 8.

§§ 147-43.1 to 147-43.3: Repealed by Session Laws 1969, c. 1184, s. 8.

Cross Reference.—For present provisions as to printing of Session Laws, see § 120-34.

§ 147-45. Distribution of copies of State publications.—The Secretary of State (and the Administrative Officer of the Courts, with respect to Appellate Division Reports) shall, at the State's expense, as soon as possible after publication, distribute such number of copies of the Session Laws, and Senate and House Journals, to federal, State and local governmental officials, departments and agencies, and to educational institutions for instructional and exchange use, as is set out in the table below:

	Session Laws	House and Senate Journals	Appellate Division Reports
State Departments and Officials:			
Governor	3	1	1
Lieutenant Governor	1	1	1
Auditor	3	1	1
Treasurer	3	1	1
Secretary of State	3	1	1
Superintendent of Public Instruction	3	1	1
Attorney General	10	1	11
Commissioner of Agriculture	3	1	1
Commissioner of Labor	3	1	1
Commissioner of Insurance	3	1	1
State Board of Health	3	1	0
State Highway Commission	3	1	1
State Board of Charities and Public Welfare	3	1	0
Adjutant General	2	0	0
Commissioner of Banks	2	0	0
Commissioner of Revenue	5	0	1
Commissioner of Motor Vehicles	1	0	0
Utilities Commission	8	1	8
State School Commission	2	0	0
State Board of Elections	2	0	0
Local Government Commission	2	0	1
Budget Bureau	2	1	1
State Bureau of Investigation	1	0	1
Director of Probation	2	0	1
Commissioner of Paroles	2	0	1
Department of Conservation and Development	3	1	0
Veterans' Loan Commission	1	0	0
Industrial Commission	7	0	8
State Board of Alcoholic Beverage Control	2	0	0
Division of Purchase and Contract	2	0	0
Division of Property Control	1	0	1
Justices of the Supreme Court	1 each	1 each	1 each
Judges of the Court of Appeals	1 each	1 each	1 each
Clerk of the Supreme Court	1	1	0
Clerk of the Court of Appeals	1	1	0
Judges of the Superior Court	1 each	0	1 each

	Session Laws	House and Senate Journals	Appellate Division Reports
Emergency Judges of the Superior Court	1 each	0	1 each
Special Judges of the Superior Court	1 each	0	1 each
Solicitors of the Superior Court	1	0	1
Employment Security Commission	1	1	1
State Employment Service	1	0	0
State Commission for the Blind	1	0	1
State Prison	1	0	0
Western North Carolina Sanatorium	1	0	0
Eastern North Carolina Sanatorium	1	0	0
State Department of Archives and History	3	0	0
State Library	23	23	3
Legislative Building Library	2	2	2
Supreme Court Library		as many as requested	
Appellate Division Reporter	0	0	1
State Soil and Water Conservation Committee	1	0	0
General Assembly Members and Officials:			
Representatives of General Assembly	1 each	1 each	0
State Senators	1 each	1 each	0
Principal Clerk—Senate	1	1	0
Reading Clerk—Senate	1	1	0
Sergeant at Arms—Senate	1	1	0
Principal Clerk—House	1	1	0
Reading Clerk—House	1	1	0
Sergeant at Arms—House	1	1	0
Enrolling Clerk	1	0	0
Engrossing Clerk—House	1	1	0
Indexer of the Laws	1	0	0
Schools and Hospitals:			
University of North Carolina at Chapel Hill	65	56	71
University of North Carolina at Charlotte	3	1	1
North Carolina State University at Raleigh	5	1	1
University of North Carolina at Greensboro	3	1	1
Duke University	25	25	25
Davidson College	1	1	1
Wake Forest University	5	5	25
Western Carolina University	1	1	1
Lenoir Rhyne College	1	1	1
Elon College	1	1	1
Guilford College	1	1	1
Wingate College	1	1	0
Pfeiffer College	1	1	0
Barbara Scotia College	1	1	0
East Carolina University	1	1	1
Catawba College	0	0	1
Atlantic Christian College	1	1	1
North Carolina School for the Deaf	1	0	0
State Hospital at Raleigh	1	0	0
Broughton Hospital	1	0	0

	Session Laws	House and Senate Journals	Appellate Division Reports
State Hospital at Goldsboro	1	0	0
Caswell Training School	1	0	0
School for the Blind and Deaf	1	0	0
State Normal School at Fayetteville	1	0	1
North Carolina Central University	5	5	5
Asheville-Biltmore College	1	1	1
Elizabeth City State University	1	1	0
Local Officials:			
Clerks of the Superior Courts	1 each	1 each	1 each
Register of Deeds of the Counties	1 each	0	0
Federal, Out-of-State, and Foreign Officials and Agencies:			
Secretary to President	1	0	1
Secretary of State	1	1	1
Secretary of Defense	1	0	1
Secretary of Agriculture	1	0	1
Attorney General	1	0	1
Postmaster General	1	0	1
Marshal of United States Supreme Court	1	0	1
Department of Justice	1	0	1
Bureau of Census	1	0	1
Treasury Department	1	0	1
Department of Internal Revenue	1	0	1
Department of Labor	1	1	1
Bureau of Public Roads	1	0	1
Department of Commerce	1	1	1
Department of Interior	1	0	1
Veteran's Administration	1	0	1
Securities and Exchange Commission	1	0	1
Social Security Board	1	0	1
Farm Credit Administration	1	0	1
Library of Congress	8	2	5
Federal Judges resident in North Carolina	1 each	0	1 each
Federal District Attorneys resident in North Carolina	1 each	0	1 each
Clerks of Federal Court resident in North Carolina	1 each	0	1 each
Chief executives or designated libraries or governments of other states, territories and countries, including Canada, Canal Zone, Porto Rico, Alaska and Philippine Islands, provided such governments exchange publications with the Supreme Court Library	1 each	0	1 each

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for his private use one complete and up-to-date set of the Appellate Division Reports. The copies of Reports furnished each justice or judge as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of Reports.

One copy each of the Public Laws, the Public-Local Laws and the Appellate Division Reports shall be furnished the head of any department of State government created in the future.

Five complete sets of the Public Laws, the Public-Local and Private Laws, the Senate and House Journals and the Appellate Division Reports heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes.

One complete set of the Public Laws, Public-Local Laws, Private Laws, and the Senate and House Journals heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to Elizabeth City State University.

The Governor may delete from the above list, in his discretion, any government official, department, agency or educational institution.

The office of the Attorney General shall receive from the Administrative Office of the Courts eleven copies of the Court of Appeals Reports and advance sheets of the Court of Appeals Reports at no cost to the Attorney General's office. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285.)

Cross Reference.—

For provision that a statutory reference to the "Budget Bureau" shall be deemed to refer to the Department of Administration, see § 143-344.

Editor's Note.—

Public Laws 1939, c. 178, changed the name of Fayetteville State Normal School to Fayetteville State Teachers College. Session Laws 1963, c. 507 changed the name to Fayetteville State College. Session Laws 1969, c. 801, s. 3 changed the name to Fayetteville State University.

Session Laws 1959, c. 1028, s. 3, changed the name of the State Hospital at Morganton to Broughton Hospital.

The 1965 amendment changed the number of copies to be sent to certain distributees and inserted in the table of enumerated departments and officials "Division of Property Control."

The first 1967 amendment, effective July 1, 1967, inserted the words in parentheses near the beginning of the section and deleted "and Supreme Court Reports" following "Senate and House Journals" in the paragraph preceding the table.

The second 1967 amendment inserted in the table of enumerated departments and officials "State Soil and Water Conservation Committee."

The third 1967 amendment added to the table of schools and hospitals Atlantic Christian College, University of North Carolina at Charlotte, Wingate College, Pfeiffer College and Barbara Scotia College, and corrected the names of certain schools already appearing on the list.

The fourth 1967 amendment substituted "East Carolina University" for "East Carolina College."

The fifth 1967 amendment added to the table of schools and hospitals Asheville-Biltmore College.

The sixth 1967 amendment increased the copies of Session Laws and Supreme Court Reports distributed to the Attorney General from eight to ten.

Session Laws 1969, c. 355, added to the table of schools and hospitals Elizabeth City State College. The amendment also added the third paragraph from the end of the section.

Session Laws 1969, c. 608, s. 1, changed the name of "North Carolina College at Durham" to "North Carolina Central University."

Session Laws 1969, c. 801, s. 2, provides that wherever in statutes, titles or captions the words "Elizabeth City State College" are used they shall be amended to read "Elizabeth City State University."

Session Laws 1969, c. 852, ss. 1, 2, added Western Carolina University to the table of schools and hospitals and substituted "Wake Forest University" for "Wake Forest College" therein.

Session Laws 1969, c. 1190, s. 54, effective July 1, 1969, substituted "Appellate Division Reports" for "Supreme Court

Reports" in the first, third and fourth paragraphs and in the table, added to the table "Judges of the Court of Appeals," "Clerk of the Court of Appeals" and "Legislative Building Library," substituted, in the table, "Appellate Division Reporter" for "Supreme Court Reporter" and "Secretary of Defense" for "Secretary of War," deleted, in the table, "Secretary of Navy" and "Work Projects Administration" and changed the number of copies to be sent to certain distributees. The amendment also rewrote the first sentence of the second paragraph and inserted "or judge" in the second sentence of the second paragraph.

Session Laws 1969, c. 1285, added the last paragraph.

Chapter 777, Session Laws 1967, substituted "North Carolina College at Durham" (now "North Carolina Central University") for "North Carolina College for Negroes" in the table but made no similar change in the fourth paragraph from the end of the section.

By virtue of Session Laws 1969, c. 982, "State Board of Charities and Public Welfare" shall be construed to mean "State Board of Social Services."

Sections 116-126 to 116-137, relating to The Caswell School (formerly Caswell Training School) were repealed by Session Laws 1963, c. 1184, s. 7.

Publications Distributed Pursuant to This Statute Belong to Office and Not Individual Who Holds Office.—See opinion of Attorney General to Honorable J. Russell Nipper, Clerk of Superior Court, Wake County, 11/24/70.

§ 147-48. Sale of Laws and Journals.—Such Laws and Journals as may be printed in excess of the number directed to be distributed, the Secretary of State may sell at such price as he deems reasonable, not exceeding cost plus ten percent (10%). The Secretary may allow the regular licensed booksellers in this State a discount on Laws and Journals not exceeding twelve and one half percent (12½%). All proceeds received from sales made pursuant to this section shall be paid into the State treasury. (1941, c. 379, s. 4; 1943, c. 48, s. 4; 1955, c. 978, s. 2; 1967, c. 691, s. 55.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, rewrote the portion of the first sentence following "not exceeding," deleted the former second sentence, concerning the sale of Supreme Court Reports, and deleted "and Supreme Court Reports" in the present second sentence.

§ 147-49. Disposition of damaged and unsaleable publications.—The Secretary of State is hereby authorized and empowered to dispose of damaged and unsaleable House and Senate Journals and Public Laws of various years at a price to be determined by the Secretary of State. (1939, c. 345; 1967, c. 691, s. 56.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, deleted "such" preceding "damaged," deleted "North Carolina Supreme Court Reports" following "unsaleable" and deleted "the Supreme Court Reporter and the Marshal-Librarian of the Supreme Court" at the end of the section.

§ 147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc.—Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
University of North Carolina at Charlotte	2 copies;
University of North Carolina at Greensboro	2 copies;
North Carolina State University at Raleigh	2 copies;
East Carolina University at Greenville	2 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina Central University	5 copies;
Library of Congress	2 copies;
State Library	5 copies;

Western Carolina University .... 2 copies;
and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University. (1941, c. 379, s. 5; 1955, c. 505, s. 7; 1967, cc. 1038, 1065; 1969, cc. 608, s. 1; 852, s. 3.)

Editor's Note.—

Session Laws 1967, c. 1065, added the provisions for University of North Carolina at Charlotte, University of North Carolina at Greensboro, North Carolina State University at Raleigh, and "East Carolina College at Greenvilie" (now "East Carolina University at Greenville") and substituted "North Carolina College at Durham" (now "North Carolina Central University") for "North Carolina College for Negroes" twice in the section. Session Laws 1967, c. 1038, changed the name of "East Carolina College" to "East Carolina University."

Session Laws 1969, c. 608, s. 1, changed the name of "North Carolina College at Durham" to "North Carolina Central University."

Session Laws 1969, c. 852, s. 3, added the provision for Western Carolina University.

§ 147-51. Clerks of superior courts responsible for Appellate Division Reports; lending prohibited.—From and after March 9, 1927, the clerks of the superior courts of the State of North Carolina are held officially responsible for the volumes of the North Carolina Appellate Division Reports furnished and to be furnished them by the State.

The said clerks of the various courts shall not lend or permit to be taken from their custody the said Reports, nor shall any person with or without the permission of the said clerks take them from their possession. (1927, c. 259; 1969, c. 1190, s. 55.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, deleted the former first paragraph, requiring the clerks to furnish to the Secretary of State an annual inventory of volumes of the Supreme Court Reports on hand, and substituted "Appellate Division Reports" for "Supreme Court Reports" in the present first paragraph.

ARTICLE 5.

Auditor.

§ 147-54.1. Division of Publications; duties.—The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the Director of Publications. This Division shall publish the North Carolina Manual, Directory, Index of Local Legislation and such other publications as may be useful to the members and committees of the General Assembly and other officials of the State and of the various counties and cities.

The Division shall also perform all such other duties as may be assigned by the Secretary of State. (1915, c. 202, ss. 1, 2; C. S., ss. 6147, 6148; 1939, c. 316; 1971, c. 685, s. 3.)

Editor's Note.—

The 1971 amendment substituted "Director of Publications" for "Assistant to the Secretary of State" at the end of the first sentence of the first paragraph and rewrote the remainder of the section.

§ 147-55. Salary of Auditor.—The salary of the State Auditor shall be twenty-five thousand dollars ($25,000.00) a year, payable monthly. (1879, c. 240, s. 7; 1881, c. 213; Code, s. 3726; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; Rev., s. 2744; 1907, c. 830, s. 5; c. 994, s. 2; 1911, c. 108, s. 1; c. 136, s. 1; 1913, c. 172; 1919, c. 149; c. 247, s. 7; C. S., s. 3867; Ex. Sess. 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953,

c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1.)

Editor's Note.—

Both 1967 amendments increased the salary from $18,000 to $20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary from $20,000 to $22,500.

The 1971 amendment, effective July 1, 1971, increased the salary from $22,500 to $25,000.

§ **147-57. Bond.**—The State Auditor shall be placed under an official bond in a penal sum to be fixed by the Governor and Council of State at not less than fifty thousand ($50,000) dollars. Such official bond shall be corporate surety and furnished by a company admitted to do business in the State. The premiums will be paid by the State out of the appropriations to the State Auditor's Office. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1929, c. 337, s. 1; 1969, c. 844, s. 13.)

Editor's Note. — The 1969 amendment added the last sentence.

§ **147-58. Duties and authority of State Auditor.**

(17) The Auditor may, as often as he deems advisable, conduct a detailed review of the bookkeeping and accounting systems in use in the various departments, institutions, commissions, boards and agencies which are supported partially or entirely from State funds. Such examinations would be for the purpose of evaluating the adequacy of systems in use by these agencies and institutions. In instances where the Auditor determines that existing systems are outmoded, inefficient or otherwise inadequate, he shall prescribe and supervise the installation of such changes, as, in his judgment, appear necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful financial statements and reports. In all cases in which major changes in the accounting systems are made, he will be responsible for seeing that the new system is designed to accumulate information required for the preparation of budget reports and other financial reports required by the Budget Division of the Department of Administration. In instances in which departments, institutions, boards, commissions and agencies feel it desirable to revise or alter existing accounting systems, said agencies or institutions shall request the Auditor to make a survey of their systems for the purpose of seeing if such a change is desirable, including the advisability of purchasing or renting accounting equipment. Requisitions for the purchase of accounting equipment or contracts for the rental of accounting equipment for any State department, institution, or agency shall be approved by the Auditor.

(1969, c. 458, s. 1.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, rewrote subdivision (17).

As the rest of the section was not changed by the amendment, only subdivision (17) is set out.

§ **147-62. Assignments of claims against State.**—All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, and life insurance companies: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of any credit union organized pursuant to chapter 54 of the North Carolina General Statutes having a membership at least one half of whom are employed by the State or its institutions, departments, bureaus, agencies or commissions, may authorize, in writing, the periodic deduction from his salary or wages as such employee of a designated lump sum, which shall be paid to such credit unions when said salaries or wages are payable, for deposit to such accounts, purchase of such shares or payment of such obligations as the employee and the credit union may agree: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, motor vehicle inspectors of the Revenue Department, and State prison guards, to the commissioners of the Law Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such Fund. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128; 1965, c. 1179; 1969, c. 625.)

Local Modification.—Guilford: 1965, c. 216.

Editor's Note.—

The 1969 amendment rewrote the second proviso as previously amended in 1965.

Deduction from State Employee's Check of Wage Earner's Plan Payments Pursuant to Chapter XIII of the Bankruptcy Act Permissible. — See opinion of Attorney General to Mr. Henry Bridges, State Auditor, 41 N.C.A.G. 277 (1971).

ARTICLE 6.

Treasurer.

§ **147-65. Salary of State Treasurer.**—The salary of the State Treasurer shall be twenty-five thousand dollars ($25,000.00) a year, payable monthly. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C. S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1.)

Editor's Note.—

Both 1967 amendments increased the salary from $18,000 to $20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary from $20,000 to $22,500.

The 1971 amendment, effective July 1, 1971, increased the salary from $22,500 to $25,000.

§ **147-69. Deposits of State funds in banks regulated.**—Banks having State deposits shall furnish to the Auditor of the State, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. No bank shall make any charge for exchange or for the collection of any warrant drawn on the Treasurer or for the transmission of any funds which may come into the hands of the State Treasurer, or any other State department, agency, bureau or commission; provided, that banks organized under the laws of the State of North Carolina may charge for each cashier's check issued to deputy collectors of revenue as a means of transmitting to the Commissioner of Revenue the proceeds of collections of revenue, not over twenty cents (20¢) for each check in the amount of not over one thousand dollars ($1,000.00), and for each check for an amount in excess of one thousand dollars ($1,000.00), such banks may charge not over twenty cents (20¢) plus one tenth of one percent (1%) of the amount of such check in excess of one thousand dollars($1,000.00). The Commissioner of Banks and the bank examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C. S., s. 7684; 1931, c. 127, s. 1, c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183; 1967, c. 398, s. 2.)

Editor's Note.—

The 1967 amendment deleted the former second paragraph, relating to the payment and disposition of interest on deposits of State money in banks.

§ 147-69.1. Deposit or investment of surplus State funds; reports of State Treasurer.—It shall be the duty of the State Treasurer, with assistance of the Director of the Budget, on or before the tenth day of each calendar month, and upon request of the Governor or the Council of State, at any other time, to carefully analyze the amount of cash in the general fund of the State and in all special funds credited to any special purpose designated by the General Assembly or held to meet the budgets or appropriations for maintenance and permanent improvements of the several institutions, boards, departments, commissions, agencies, persons or corporations of the State, and to determine in his opinion when the cash in any such funds is in excess of the amount required to meet the current needs and demands on such funds, and report his findings to the Governor and the Council of State. The Governor and the State Treasurer, acting jointly, with the approval of the Council of State, are hereby authorized to invest such excess funds

(1) In bonds, notes, certificates of indebtedness and bills of the United States of America or in obligations which are fully guaranteed by the United States of America; or

(2) In bonds, notes and other obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, Banks for Cooperatives, and the Federal Land Banks; or

(3) In bonds and notes of the State of North Carolina; or

(4) In certificates of deposit issued by banks or official depositories within the State of North Carolina, yielding a return at rates not less than those available on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturities.

Notwithstanding the above, if such rates on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturity are higher than the rates banks are permitted to pay by federal or State statutes or regulations and if in the judgment of the Governor and the Council of State it would benefit the economy of the State, such excess funds may be invested in certificates of deposit issued by banks or official depositories within the State of North Carolina at the maximum rate that banks are permitted to pay by federal or State statutes or regulations. The said funds shall be so invested that in the judgment of the Governor and State Treasurer they may be readily converted into money at such time as the money will be needed. The interest received on all such deposits and the income from such investments, unless otherwise required by law, shall be paid into the State's general fund; provided, however, that on and after July 1, 1961, all interest accruing on the monthly balance of the highway fund of the State shall be paid to the State Highway Fund.

The State Treasurer shall include in his biennial reports to the General Assembly a full and complete statement of all funds invested by virtue of the provisions of this section, the nature and character of investments therein, and the revenues derived therefrom, together with all such other information as may seem to him to be pertinent for the full information of the General Assembly with reference thereto.

The State Treasurer shall also cause to be prepared a quarterly statement on or before the tenth day of each January, April, July and October in each year. This statement shall show the amount of cash on hand, the amount of money on deposit and the name of each depository, and all investments for which he is in any way responsible. This statement shall be delivered to the Governor as Director of the Budget, and a copy thereof shall be posted in the office of the State Treasurer for the information of the public. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2; 1967, c. 398, s. 1; 1969, c. 125.)

Editor's Note.— The 1967 amendment rewrote the second sentence.

The 1969 amendment rewrote the third sentence.

§ 147-77. Daily deposit of funds to credit of Treasurer.—All funds belonging to the State of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State or any agency, department, division or commission thereof, except officers and the clerks of the Supreme Court and Court of Appeals, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided, that the Treasurer may refund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after thirty days' trial. (1925, c. 128, s. 1; 1945, c. 159; 1969, c. 44, s. 77.)

Editor's Note.— The 1969 amendment substituted "clerks of the Supreme Court and Court of Appeals" for "clerk of the Supreme Court."

ARTICLE 7.

Commissioner of Revenue.

§ 147-87. Commissioner of Revenue; appointment; salary.

State Government Reorganization.—The Commissioner of Revenue was transferred to the Department of Revenue by § 143A-188, enacted by Session Laws 1971, c. 864.

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

Sec.
148-1. State Department of Correction; Commission of Correction; Commissioner of Correction.
148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.
148-5. Commissioner to manage prison property.

Article 2.

Prison Regulations.

148-12. Diagnostic and classification programs.
148-18. Wages, allowances and loans.
148-19. Health services.
148-22. Treatment programs.
148-23. Prison employees not to use intoxicants, narcotic drugs or profanity.
148-24. Religious services.
148-25. Commissioner to investigate death of convicts.

Article 3.

Labor of Prisoners.

148-28. Sentencing prisoners to Central Prison; youthful offenders.
148-36. Commissioner of Correction to control classification and operation of prison facilities.
148-37. Additional facilities authorized; contractual arrangements.

Article 3A.

Facilities and Programs for Youthful Offenders.

148-49.1. Purpose of article.
Sec.
148-49.2. Definitions.
148-49.3. Presentence diagnostic studies.
148-49.4. Sentencing a youthful offender.
148-49.5. Classification studies.
148-49.6. Placement of youthful offenders.
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Article 4.

Paroles.

148-64. Cooperation of prison and parole officials and employees.

Article 7.

Records, Statistics, Research and Planning.

148-74. Records Section.
148-76. Duties of Records Section.
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148-79. [Repealed.]
148-81. [Repealed.]

Article 10.

Interstate Agreement on Detainers.

148-89. Agreement on detainers entered into; form and contents.
148-90. Meaning of "appropriate court."
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148-93. Authority and duty of official in charge of institution.
148-94. Designation of central administrator of and information agent for agreement.
148-95. Distribution of copies of article.

ARTICLE 1.

Organization and Management.

§ 148-1. State Department of Correction; Commission of Correction; Commissioner of Correction.—(a) A State Department of Correction is hereby created. All powers and duties vested in and imposed upon the State Prison Department are transferred to the State Department of Correction. The State Prison Department, the State Prison Commission, and the office of Director of Prisons are abolished. The governing authorities of the State Department of Correction shall include a Commission of Correction and a Commissioner of Correction.

(b) The Commission of Correction shall be composed of seven members appointed by the Governor, who shall designate one member to serve as chairman.

Members of this Commission shall be deemed "commissioners for special purposes" within the meaning of the language of article XIV, § 7, of the Constitution of this State. The persons serving on the State Prison Commission immediately prior to August 1, 1967, shall serve as members of the Commission of Correction for the duration of the terms to which they were appointed to the State Prison Commission. Subsequent appointments to the Commission of Correction shall be made for a term of four years, except those made to fill out an unexpired term in case of the death, resignation, or removal of a member. A member may be reappointed. The Governor may remove any member for cause.

(c) Members of the Commission of Correction who are not salaried officials or employees of the State shall receive such per diem and necessary traveling expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions generally. Members who are salaried officials or employees of the State shall not receive any per diem but shall receive their regular salary without deduction for loss of time while engaged in their duties as members of this Commission.

(d) The Commission of Correction shall meet at least once in each ninety days, and may hold special meetings at any time and place within the State at the call of its chairman to adopt general policies, rules and regulations, and budgetary proposals of the State Department of Correction, and to advise with the Commissioner of Correction on matters pertaining to the administration of the Department. The Commission may appoint temporary or permanent advisory committees for such purposes as it may determine. The Commission shall keep minutes of all its meetings.

(e) The executive head of the State Department of Correction shall be a Commissioner of Correction appointed by the Commission of Correction, subject to the approval of the Governor. The person serving as Director of Prisons immediately prior to August 1, 1967, shall serve as Commissioner of Correction for the duration of the term to which he was appointed Director of Prisons. Subsequent appointments to the office of Commissioner of Correction shall be made for a term of four years, except those made to fill out an unexpired term in case of the death resignation, or removal of a Commissioner of Correction. A Commissioner may be reappointed. The Commission may remove the Commissioner, with the consent and approval of the Governor.

(f) The salary of the Commissioner of Correction shall be set by the Governor subject to the approval of the Advisory Budget Commission. The compensation of other personnel of the State Department of Correction shall be determined by the Commissioner of Correction in conformity with the provisions of the Executive Budget Act and the State Personnel Act.

(g) The Commissioner of Correction shall administer the affairs of the State Department of Correction in accordance with law and the general policies, rules and regulations duly adopted by the Commission of Correction. His authority and responsibilities shall include but not be limited to:

(1) The appointment, promotion, discipline, demotion, suspension, and discharge of other officers and employees of the Department;

(2) Prescribing their duties and delegating to them appropriate powers;

(3) Providing programs for personnel recruitment, training and development to produce an able, resourceful and dependable State Correction Service. (1901, c. 472, s. 3; Rev., s. 5388; C. S., s. 7703; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; 1955, c. 238, s. 1; 1957, c. 349, s. 1; 1967, c. 996, s. 1.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

Section 13, c. 996, Session Laws 1967, provides that the words "State Department of Correction" or "Department of Correction" as the context may require shall be substituted for the words "State Prison Department" or "Prison Department" each time that the latter appear in any sections of the General Statutes of North Carolina, except as otherwise provided in the act.

Section 14 of c. 996 provides that the words "Commission of Correction" shall be substituted for the words "State Prison Commission" or "Prison Commission" each time that the latter appear in any sections of the General Statutes of North Carolina, except as otherwise provided in the act.

Section 15 of c. 996 provides that the words "Commissioner of Correction" shall be substituted for the words "Director of Prisons" each time the latter appear in any section of the General Statutes of North Carolina, except as otherwise provided in the act.

The reference to the Constitution in subsection b of this section is to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. VI, § 9.

State Government Reorganization.—The Department and Commission of Correction were transferred to the Department of Social Rehabilitation and Control by § 143A-165, enacted by Session Laws 1971, c. 864.

§ 148-2. Prison moneys and earnings.—(a) Persons authorized to collect or receive the moneys and earnings of the State prison system shall enter into bonds payable to the State of North Carolina in penal sums and with security approved by the Commission of Correction, conditioned upon the faithful performance by these persons of their duties in collecting, receiving, and paying over prison moneys and earnings to the State Treasurer. Only corporate security with sureties licensed to do business in North Carolina shall be accepted.

(1967, c. 996, s. 14.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "Commission of Correction" for "State Prison Commission" in the first sentence of subsection (a).

As subsection (b) was not affected by the amendment, it is not set out.

§ 148-3. Prison property.—(a) The State Department of Correction shall subject to the provisions of G.S. 143-341, have control and custody of all unexpended surplus highway funds previously allocated for prison purposes and all property of every kind and description now used by or considered a part of units of the State prison system, except vehicles used on a rental basis. The property coming within the provisions of this section shall be identified and agreed upon by the executive heads of the highway and prison systems, or by their duly authorized representatives. The Governor shall have final authority to decide whether or not particular property shall be transferred to the Department of Correction in event the executive heads of the two systems are unable to agree.

(b) Property, both real and personal, deemed by the Department of Correction to be necessary or convenient in the operation of the State prison system may, subject to the provisions of G.S. 143-341, be acquired by gift, devise, purchase, or lease. The Department of Correction may, subject to the provisions of G.S. 143-341, dispose of any prison property, either real or personal, or any interest or estate therein. (1901, c. 472, ss. 2, 6; Rev., s. 5392; C. S., s. 7705; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; 1957, c. 349, s. 3; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first sentence of subsection (a) and substituted "Department of Correction" for "Prison Department" in the third sentence of that subsection and in the first and second sentences of subsection (b).

§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.—The Commissioner of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Commissioner of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Commissioner shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Commissioner of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Commissioner of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

(1) Contact prospective employers; or
(2) Secure a suitable residence for use when released on parole or upon discharge; or
(3) Obtain medical services not otherwise available; or
(4) Participate in a training program in the community; or
(5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not a natural parent, has acted in the place of a parent), brother, or sister.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Commissioner of Correction, shall be deemed an escape from the custody of the Commissioner of Correction punishable as provided in G.S. 148-45. (1901, c. 472, s. 4; Rev., s. 5390; C. S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10; 1959, c. 109; 1965, c. 1042; 1967, c. 996, ss. 13, 15.)

Editor's Note.—

The 1965 amendment added the last paragraph.

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the second sentence and substituted "Commissioner of Correction" for "Director of Prisons" and "Commissioner" for "Director" throughout this section.

Opinions of Attorney General. — Mr. Martin R. Peterson, N.C. Department of Corrections, 8/18/69.

Power Given to Commissioner or Agents to Designate Places of Confinement.—This section gives the Director of Prisons (now Commissioner of Correction) or his duly authorized agents or representatives the authority to designate the places of confinement within the State prison system where the sentences of prisoners shall be served. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

Recommendation of Confinement Not Cruel and Unusual Punishment. — An attachment to commitment papers recommending "that the defendant not be placed upon work release or permitted to leave his place of confinement under this section or any other statute but be kept at all times in close security until the sentence is completed," was a mere recommendation and had no legal effect upon the type or place of incarceration of the petitioner, and it did not constitute cruel and unusual punishment. Harris v. North Carolina, 320 F. Supp. 770 (M.D.N.C. 1970), aff'd, 435 F.2d 1305 (4th Cir. 1971).

Cited in State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969).

§ 148-5. Commissioner to manage prison property. — The Commissioner of Correction shall manage and have charge of all the property and effects of the State prison system, and conduct all its affairs subject to the provisions of this chapter and the rules and regulations legally adopted for the government thereof. (1933, c. 172, s. 4; 1955, c. 238, s. 3; 1967, c. 996, s. 15.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "Commissioner of Correction" for "Director of Prisons."

§ 148-6. Custody, employment and hiring out of convicts.—The State Department of Correction shall provide for receiving, and keeping in custody until discharged by law, all such convicts as may be now confined in the prison and such as may be hereafter sentenced to imprisonment therein by the several courts of this State. The Department shall have full power and authority to provide for employment of such convicts, either in the prison or on farms leased or owned by the State of North Carolina, or elsewhere, or otherwise; and may contract for the hire or employment of any able-bodied convicts upon such terms as may be just and fair, but such convicts so hired, or employed, shall remain under the actual management, control and care of the Department: Provided, however, that no female convict shall be worked on public roads or streets in any manner. (1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6; Rev., s. 5391; C. S., s. 7707; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" near the beginning of the first sentence.

Department of Correction Has No Authority on Its Own to Correct Invalid Sentence.—See opinion of Attorney General to Mr. Martin Peterson, Department of Correction, 41 N.C.A.G. 291 (1971).

Stated in State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

§ 148-7. Inspection of mines.—The State Department of Correction is hereby authorized, in its discretion, to have monthly inspection made of all mines in North Carolina in which State convicts are or may be employed and to employ for this purpose the services of an accredited mine inspector approved by the United States Bureau of Mines. (1929, c. 292, ss. 1, 2; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" near the beginning of the section.

§ 148-8. Automobile license tags to be manufactured by Department.—The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for such tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1941, c. 36; 1957 c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" throughout this section.

§ 148-10. State Board of Health to supervise sanitary and health conditions of prisoners.—The State Board of Health shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the State Department of Correction, and shall make periodic examinations of the same and report to the State Department of Correction the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919. c. 80, s. 4; C. S., s. 7714; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in two places in this section.

ARTICLE 2.

Prison Regulations.

§ 148-11. Authority to make regulations.—The Commissioner shall propose rules and regulations for the government of the State prison system, which shall become effective when approved by the Commission of Correction. The Commissioner shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C. S., s. 7721; 1925. c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4; 1967, c. 996, ss 14, 15.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "Commission of Correction" for "State Prison Commission" at the end of the first sentence and substituted "Commissioner" for "Director" in the first and second sentences.

The prison rules authorized by this section are administrative and not judicial. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

And Cannot Affect Sentences.—The administrative application of the rules authorized by this section by prison authorities cannot affect sentences imposed by the courts. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

Courts are not authorized to deal with the giving or withholding of privileges or rewards under the rules authorized by this section. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

Applied in State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Cited in State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965).

§ 148-12. Diagnostic and classification programs. — (a) The Department of Correction shall, as soon as practicable, establish diagnostic centers to make social, medical, and psychological studies of persons committed to the Department. Full diagnostic studies shall be made before initial classification in cases where such studies have not been made.

(b) Within the limits of its capacity, and in accordance with standards established by the Department, a diagnostic center may, at the request of any sentencing court, make a presentence diagnostic study of any person who has been convicted is before the court for sentence, and is subject to commitment to the Department. Where necessary for this purpose, the defendant may be received in the center for such period of study as the court may authorize, but may not be held there for more than 60 days unless the court grants an extension of time, which may be granted for an additional period not to exceed 30 days. The total time spent in the center shall not exceed 90 days or the maximum term of imprisonment authorized as punishment for the offense of which the person has been convicted if the maximum is less than 90 days. Time spent in the center for a diagnostic study shall be credited on any sentence of commitment imposed on the person studied. A copy of the diagnostic study report shall be made available to defense counsel before the court pronounces sentence. The defendant shall be afforded fair opportunity to controvert the contents of the report, if he so requests.

(c) Any prisoner confined in the State prison system while under a sentence to imprisonment imposed upon conviction of a felony shall be classified and treated as a convicted felon even if, before beginning service of the felony sentence, such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors. (1917 c. 278, s. 2; 1919, c. 191, s. 2; C. S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18. 1955, c. 238, s. 5; 1959, c. 50; 1967, c. 996, s. 2.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

Appealability of Commitment for Presentence Diagnostic Study. — See opinion of Attorney General to Mr. Daniel T. Perry, Assistant Solicitor, Ninth Solicitorial District, 9/3/70.

Credit for Time Spent in Diagnostic Center.—Where the judgment fails to provide that defendant shall receive credit against his sentence for time spent in the diagnostic center, the judgment must be vacated and the case remanded for entry of judgment so providing. State v. Powell, 11 N.C. App. 194, 180 S.E.2d 490 (1971).

Second Judgment against Defendant Not Precluded.—Following the procedure provided for in this section would not preclude the State from entering a second judgment against the defendant. State v. Powell, 11 N.C. App. 194, 180 S.E.2d 490 (1971).

Cited in State v. Davis, 8 N.C. App. 99, 173 S.E.2d 490 (1970).

§ 148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc.

Rules as to "Good Time" Rewards Are Strictly Administrative.—Prison rules and regulations respecting rewards and privileges for good conduct ("good time") are strictly administrative and not judicial. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965); State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

And Courts Are Not Authorized to Deal with Giving or Withholding Such Rewards.—Giving or withholding of the rewards and privileges under these rules is not a matter with which the courts are authorized to deal. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965).

The giving or withholding of the rewards and privileges under rules and regulations authorized by § 148-11 is not a matter with which the courts are authorized to deal. State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Such Authority Is Vested in Commissioner.—State law vests authority to determine allowance and forfeiture of gained time in the Director of Prisons (now Commissioner of Correction) to be exercised in his sound discretion. Patton v. Ross, 267 F. Supp. 387 (E.D.N.C. 1967).

But service on a vacated sentence must be considered in determining defendant's gained time, if any, on account of good behavior. Patton v. Ross, 267 F. Supp. 387 (E.D.N.C. 1967).

Benefits Depend on Conduct.—Whether a prisoner shall benefit by the rules and regulations authorized by § 148-11 depends on his own conduct. State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Allowance of gained time is a discretionary act of the State prison administrative body, and their decisions as to its allowance will not be upset by the federal courts unless their actions are clearly arbitrary or capricious. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

Cited in State v. Weaver, 264 N.C. 681, 142 S.E.2d 633 (1965).

§ 148-18. Wages, allowances and loans. — (a) Prisoners may be compensated, at rates fixed by the Department's rules and regulations, for work performed and for attendance at training programs; provided, that no prisoner shall be paid more than one dollar ($1.00) per day. Prisoners who are unable to work because of injury, illness, or other incapacity may be compensated at rates fixed by the Department's rules and regulations. The Prison Enterprises Fund shall be the source for all of these wages and allowances, and they shall be subject to forfeiture for poor work or misbehavior under the Department's rules and regulations, with the forfeited amounts being redeposited in the Prison Enterprises Fund.

(b) A prisoner shall be required to contribute to the support of any of his dependents residing in North Carolina who may be receiving public assistance during the period of commitment if funds available to the prisoner are adequate for such purpose. The dependency status and need shall be determined by the department of public welfare in the county of North Carolina in which such dependents reside.

(c) The Department of Correction shall establish a revolving fund from inmate welfare funds available to the Department to be used for loans to prisoners and parolees in accordance with regulations approved by the Commission of Correction (1935, c. 414, s. 19; 1967, c. 996, s. 3.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ **148-19. Health services.**—(a) The general policies, rules and regulations of the Department of Correction shall prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. A prisoner may be taken, when necessary, to a medical facility outside the State prison system. The Department of Correction shall seek the cooperation of public and private agencies, institutions, officials and individuals in the development of adequate health services to prisoners.

(b) Upon request of the Commissioner of Correction, the Commissioner of Mental Health may detail personnel employed by the Department of Mental Health to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Mental Health, and reimbursed from applicable appropriations to the Department of Correction. The Commissioner of Correction may make similar arrangements with any other agency of State government able and willing to aid the Department of Correction to meet the needs of prisoners for health services.

(c) Each prisoner committed to the State Department of Correction shall receive a physical and mental examination by a competent physician as soon as practicable after admission and before being assigned to work. The prisoner's work and other assignments shall be made with due regard for the report of the physician as to the prisoner's physical and mental condition. (1917, c. 286, s. 22; C. S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 4.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

Additional Examinations. — Whenever there is a change of physical or mental condition, it would seem to logically follow that a further examination is required under this section, yet, the frequency of such examinations must, as a practical matter, be left to the sound discretion of prison authorities. Threatt v. North Carolina, 221 F. Supp. 858 (W.D.N.C. 1963).

§ **148-20. Corporal punishment of prisoners prohibited.**—It is unlawful for the Commissioner of Correction or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1; 1967, c. 996, s. 15.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "Commissioner of Correction" for "Director of Prisons."

Striking Prisoner with Key Ring and Kicking Him into Cell Not Countenanced.—Nothing contained in this section can be said to countenance striking the petitioner with a key ring or kicking him into his cell. Threatt v. North Carolina, 221 F. Supp. 858 (W.D.N.C. 1963).

§ **148-22. Treatment programs.**—(a) The general policies, rules and regulations of the Department of Correction shall provide for humane treatment of prisoners and for programs to effect their correction and return to the community as promptly as practicable. Visits and correspondence between prisoners and approved friends shall be authorized under reasonable conditions, and family members shall be permitted and encouraged to maintain close contact with the prisoners unless such contracts prove to be hurtful. Casework, counseling, and psychotherapy services provided to prisoners may be extended to include members of the prisoner's family if practicable and necessary to achieve the purposes of such programs. Education, library, recreation, and vocational training programs shall be developed so as to coordinate with corresponding services and opportunities which will be available to the prisoner when he is released. Programs for the treatment and training of mentally retarded prisoners and other special groups shall be established in segregated sections of facilities housing other prisoners or in separate facilities when this is practicable.

(b) The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs designed to give persons committed to the Department opportunities for physical, mental and moral improvement. The Department may enter into agreements with other agencies of federal, State, or local government and with private agencies to promote the most effective use of available resources. (1917, c. 286, s. 15; C. S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 5.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-22.1. Educational facilities and programs for selected inmates.—(a) The State Department of Correction is authorized to take advantage of aid available from any source in establishing facilities and developing programs to provide inmates of the State prison system with such academic and vocational education as seems most likely to facilitate the rehabilitation of these inmates and their return to free society with attitudes, knowledge, and skills that will improve their prospects of becoming law-abiding and self-supporting citizens. The State Department of Public Instruction is authorized to cooperate with the State Department of Correction in planning academic and vocational education of prison system inmates, but the State Department of Public Instruction is not authorized to expend any funds in this connection.

(b) In expending funds that may be made available for facilities and programs to provide inmates of the State prison system with academic and vocational education, the State Department of Correction shall give priority to meeting the needs of inmates who are less than twenty-one years of age when received in the prison system with a sentence or sentences under which they will be held for not less than six months nor more than five years before becoming eligible to be considered for a regular parole. These inmates shall be given appropriate tests to determine their educational needs and aptitudes. When the necessary arrangements can be made, they shall receive such instruction as may be deemed practical and advisable for them. (1959, c. 431; 1967, c. 996, s. 13.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first and second sentences of subsection (a) and in the first sentence of subsection (b).

§ 148-23. Prison employees not to use intoxicants, narcotic drugs or profanity.—No one addicted to the use of intoxicating liquors, or narcotic drugs, shall be employed as superintendent, warden, guard, or in any other position connected with the State Department of Correction, where such position requires the incumbent to have any charge or direction of the prisoners; and anyone holding such position, or anyone who may be employed in any other capacity in the State prison system, who shall come under the influence of intoxicating liquors during hours of employment, or reports for duty under the effect of intoxicants, or narcotic drugs, or who shall become intoxicated, or uses narcotic drugs, under circumstances that bring discredit on the State Department of Correction, shall be subject to immediate dismissal from employment by any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the State Department of Correction who curses a prisoner under his charge shall be subject to immediate dismissal from employment and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; C. S., s. 7733; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1969, c. 382.)

Editor's Note.—

The 1969 amendment rewrote this section as amended in 1967.

§ **148-24. Religious services.**—The general policies, rules and regulations of the Department of Correction shall provide for religious services to be held in all units of the State prison system on Sunday and at such other times as may be deemed appropriate. Attendance of prisoners at religious services shall be voluntary. The Commissioner of Correction shall if possible secure the visits of some minister at the prison hospitals to administer to the spiritual wants of the sick. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; C. S., s. 7735; 1925, c. 163; c. 275, s. 6; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 6.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ **148-25. Commissioner to investigate death of convicts.**—The Commissioner of Correction, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the Commissioner may administer oaths and send for persons and papers. (1885, c. 379, s. 2; Rev., s. 5409; C. S., s. 7746; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 15.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "Commissioner of Correction" for "Director of Prisons" and "Commissioner" for "Director."

ARTICLE 3.

Labor of Prisoners.

§ **148-26. State policy on employment of prisoners.**

(b) Repealed by Session Laws 1971, c. 193, effective July 1, 1973.

(e) The State Department of Correction may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Department of Correction may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Director of the Department of Conservation and Development as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Department of Correction. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first sentence of subsection (e) and substituted "Department of Correction" for

"Prison Department" in the second and third sentences of such subsection.

The 1971 amendment repeals subsection (b) of this section effective July 1, 1973.

Only the subsections changed by the amendments are set out.

Employment of Prisoners Not Prohibited by Constitution Rewrite. — See opinion of Attorney General to Senator Julian Allsbrook, 41 N.C.A.G. 440 (1971).

Quoted in State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

§ **148-27. Women prisoners; limitations on labor of prisoners.**—The State Department of Correction may provide suitable quarters for women prisoners and arrange for work suitable to their capacity; and the several courts of the State may assign women convicted of offenses, whether felonies or misdemeanors, to these quarters. No woman prisoner shall be assigned to work under the supervision of the State Department of Correction whose term of imprisonment is less than six months, or who is under sixteen years of age. (1931, c. 145, s. 32; 1933, c. 39; c. 172, s. 18; 1935, c. 257, s. 3; 1943, c. 409; 1953, c. 1230; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first and second sentences.

§ **148-28. Sentencing prisoners to Central Prison; youthful offenders.**—The several judges of the superior courts of this State are hereby given express authority in passing sentence upon persons convicted of a felony, when, in their opinion, the nature of the offense or the character or condition of the defendant makes it advisable to do so, to sentence such person to the Central Prison at Raleigh, and thereupon a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the Central Prison. Provided, that a person under 16 years of age convicted of a felony shall not be sentenced to or imprisoned in the Central Prison at Raleigh unless (i) said person was convicted of a capital felony or (ii) has previously been imprisoned in a county jail or under the authority of the Department of Correction upon conviction of a felony. This provision shall not limit the authority of the Commissioner of Correction from transferring a person under 16 years of age to Central Prison when in the Commissioner's determination this person would not benefit from confinement in separate facilities for youthful offenders or when it has been determined that his presence would be detrimental to the implementation of programs designed for the benfit of other youthful offenders. Nor shall this provision limit the authority of the judges of the superior courts of this State or the Commissioner of Correction from committing or transferring a person under 16 years of age to Central Prison for medical or psychiatric treatment. (1933, c. 172, s. 7; 1971, c. 691.)

Editor's Note. — The 1971 amendment added all of the section following the first sentence.

Only Felons, etc.—

In accord with 1st paragraph in original. See State v. Sherron, 4 N.C. App. 386, 166 S.E.2d 836 (1969).

Transfer Pursuant to § 153-189.1.—Under § 153-189.1 the trial court, upon making an appropriate finding that it is necessary for the safety of the defendant, can order a defendant transferred to "a unit of the State Prison System designated by the Commissioner of Correction or his authorized representative," but the court should not order defendant transferred directly to central prison absent a finding that the central prison has been properly designated for that purpose by the Commissioner of Correction or his authorized representative. State v. Sherron, 4 N.C. App. 386, 166 S.E.2d 836 (1969).

§ **148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received.** — The sheriff having in charge any prisoner sentenced to the central prison at Raleigh shall send him to the central prison within five days after the adjournment of the court at which he was sentenced, if no appeal has been taken. The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the Auditor as true copies of those on file in his office. The State is not liable for the expenses of maintaining convicts until they have been received by the State Department of Correction authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception. (1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3; 1874-5, c. 107, s. 3; Code, ss. 3432, 3437, 3438; Rev., ss. 5398, 5399, 5400; C. S., ss. 7718, 7719, 7720; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the third sentence.

§ **148-30. Sentencing to public roads.**—In all cases not provided for in §§ 148-28 and 148-32 the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under the State Department of Correction, and the clerks of the several courts in which such sentences are pronounced shall notify the superintendent of the nearest highway prison camp, or such other agent of the Department as he may be advised by them is the proper person to receive such notice. Whereupon, the Department shall cause some duly authorized agent thereof to take such prisoners into custody, with the proper commitments therefor, and deliver them to such camp or station as the proper authorities of the Department shall designate: Provided, however, the Department shall not be required to accept any prisoner from any court inferior to the superior court when an appeal has been taken to the superior court, or when the judge of such inferior court shall retain control over the sentence for the purpose of modifying or changing the same. No male person shall be so assigned whose term of imprisonment is less than thirty days. (1933, c. 172, s. 8; 1943, c. 409; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first sentence.

§ **148-32. Prisoners may be sentenced to work on city and county properties; Department may provide prisoners for county.**—Any county, city or town that operates farms, parks, or other public grounds by convict labor may retain a sufficient number of prisoners for the operation of such properties, and the judges in the courts of such counties, cities, or towns, in lieu of sentencing prisoners to jail to be assigned to work under the State Department of Correction, shall sentence a sufficient number to the county jail to be assigned to work on such county, city or town properties for the necessary operation thereof; and courts may also sentence prisoners to the county jail to be assigned to work at the county home or other county-supported institution.

The Department may in its discretion provide prison labor upon terms and conditions agreed upon from time to time for doing specific tasks of work for the several county homes, county farms, or other county owned properties, but prisoners assigned to such work shall be at all times under the control and custody of a duly authorized agent of the Department. (1931, c. 145, s. 30; 1933, c. 172, s. 31; 1939, c. 243; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first sentence.

Sufficiency of Judgment to Sentence under Section. — That portion of a judgment which read "that the defendant be imprisoned . . . in the custody of the Sheriff, Common jail of Guilford County in any County Institution, under supervision of Board of County Commissioners" was not specific enough to accomplish anything. It may be that the trial judge intended to sentence defendant under authority of this section, but he failed to be specific enough to accomplish that purpose. State v. Stafford, 11 N.C. App. 520, 181 S.E.2d 741 (1971).

§ 148-33. Prison labor furnished other State agencies. — The State Department of Correction may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Department and the governing authorities of such Department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of § 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Department. Provided, further, that notwithstanding any provisions of law contained in this article or in this chapter, no male prisoner or group of male prisoners may be assigned to work in any building utilized by any State department, agency, or institution where women are housed or employed unless a duly designated custodial agent of the Commissioner of Correction is assigned to the building to maintain supervision and control of the prisoner or prisoners working there. (1933, c. 172, s. 30; 1957, c. 349, s. 10; 1961, c. 966; 1967, c. 996, ss. 13, 15.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" near the beginning of the first sentence and substituted "Commissioner of Correction" for "Director of Prisons" in the last sentence.

Cited in State v. Kimball, 261 N.C. 582, 135 S.E.2d 568 (1964).

§ 148-33.1. Sentencing, quartering, and control of prisoners with work release privileges.—(a) Whenever a person is sentenced to imprisonment for a term not exceeding five years to be served in the State prison system, the presiding judge of the sentencing court may recommend to the State Department of Correction that the prisoner be granted the option of serving the sentence under the work release plan as hereinafter authorized.

(b) The Board of Paroles of this State may authorize the State Department of Correction to grant work release privileges to any inmate of the State prison system serving a term of imprisonment: Provided, in any case where the inmate being considered for work release privileges has not yet served a fourth of his sentence if determinate or a fourth of his minimum sentence if indeterminate, the Board of Paroles shall not authorize the Department of Correction to grant him work release privileges without considering the recommendations of the presiding judge of the court which imposed the sentence.

(c) The State Department of Correction shall from time to time, as the need becomes evident, designate and adapt facilities in the State prison system for quartering prisoners with work release privileges. In areas where facilities suitable for this purpose are not available within the State prison system when needed, the State Department of Correction may contract with the proper authorities of political subdivisions of this State for quartering in suitable local confinement facilities prisoners with work release privileges. No prisoner shall be granted work release privileges until suitable facilities for quartering him have been provided in the area where the prisoner has employment or the offer of employment.

(d) The State Department of Correction is authorized and directed to establish a work release plan under which an eligible prisoner may be released from actual custody during the time necessary to proceed to the place of his employment, perform his work, and return to quarters designated by the prison authorities. No prisoner shall be granted work release privileges except upon recommendation of the presiding judge set forth in the judgment of imprisonment or written authorization of the Board of Paroles. If the prisoner shall violate any of the conditions prescribed by prison rules and regulations for the administration of the work release plan, then such prisoner may be withdrawn from work release privileges, and the prisoner may be transferred to the general prison population to serve out the remainder of his sentence. Rules and regulations for the administration of the work release plan shall be established in the same manner as other rules and regulations for the government of the State prison system.

(e) The State Department of Labor shall exercise the same supervision over conditions of employment for persons working in the free community while serving sentences imposed under this section as the Department does over conditions of employment for free persons.

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Department of Correction their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Department of Correction shall retain to his credit such amount as seems necessary to accumulate a reasonable sum to be paid to him when he is paroled or discharged from prison, and shall make such disbursements from any balance of his earnings as may be found necessary by the Department for the following purposes, considered in a priority order as stated:

(1) To pay travel and other expenses of the prisoner made necessary by his employment;
(2) To provide a reasonable allowance to the prisoner for his incidental personal expenses;
(3) To make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency status and need made by the local department of public welfare in the county of North Carolina in which such dependents reside;
(4) To comply with an order from any court of competent jurisdiction regarding the payment of an obligation of the prisoner in connection with any case before such court.

In addition, the Department of Correction in its discretion may grant a request made in writing by the prisoners for a withdrawal for any other purpose.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The State Board of Public Welfare is authorized to promulgate uniform rules and regulations governing the duties of county welfare departments under this section.

(g) No prisoner employed in the free community under the provisions of this section shall be deemed to be an agent, employee, or involuntary servant of the State prison system while working in the free community or going to or from such employment.

(h) Any prisoner employed under the provisions of this section shall not be entitled to any benefits under chapter 96 of the General Statutes entitled "Employment Security" during the term of the sentence. (1957, c. 540; 1959, c. 126; 1961, c. 420; 1963, c. 469, ss. 1, 2; 1967, c. 684; c. 996, s. 13.)

Editor's Note.—

The first 1967 amendment rewrote the second sentence and added the third sentence of the first paragraph of subsection (f).

The second 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" and "Department of Correction" for "Prison Department" throughout this section.

Opinions of Attorney General. — Mr. Martin R. Peterson, N.C. Department of Correction, 11/29/69.

Constitutionality.—See Advisory Opinion In re Work Release Statute, 268 N.C. 727, 152 S.E.2d 225 (1966).

Recommending Privilege of Work Release Program.—This section authorizes but does not require the presiding judge of the sentencing court to recommend that the prisoner be granted the privilege of the work release program. State v. Wright, 272 N.C. 264, 158 S.E.2d 50 (1967).

Quoted in State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969).

Cited in State v. Vandiver, 265 N.C. 325, 144 S.E.2d 54 (1965); State v. Hunt, 265 N.C. 714, 144 S.E.2d 890 (1965).

§ 148-36. Commissioner of Correction to control classification and operation of prison facilities.—All facilities established or acquired by the State Department of Correction shall be under the administrative control and direction of the Commissioner of Correction, and operated under rules and regulations proposed by the Commissioner and adopted by the Commission of Correction as provided in G.S. 148-11. Subject to such rules and regulations, the Commissioner shall classify the facilities of the State prison system and develop a variety of programs so as to permit proper segregation and treatment of prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and correctional treatment of persons committed to the Department. The Commissioner of Correction, or his authorized representative, shall designate the places of confinement where sentences to imprisonment in the State's prison system shall be served. The Commissioner or his representative may designate any available facility appropriate for the individual in view of custodial and correctional considerations. (1931, c. 145, s. 28; c. 277, s. 8; 1933, c. 46, ss. 3, 4; c. 172, ss. 4, 17; 1943, c. 409; 1955, c. 238, s. 7; 1957, c. 349, s. 10; 1967, c. 996, s. 7.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-37. Additional facilities authorized; contractual arrangements.—(a) Subject to the provisions of G.S. 143-341, the State Department of Correction may establish additional facilities for use by the Department, such facilities to be either of a permanent type of construction or of a temporary or movable type as the Department may find most advantageous to the particular needs, to the end that the prisoners under its supervision may be so distributed throughout the State as to facilitate individualization of treatment designed to prepare them for lawful living in the community where they are most likely to reside after their release from prison. For this purpose, the Department may purchase or lease sites and suitable lands adjacent thereto and erect necessary buildings thereon, or purchase or lease existing facilities, all within the limits of allotments as approved by the Budget Division of the Department of Administration.

(b) The Commissioner of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in federal, county or city facilities located in North Carolina, when to do so would most economically and effectively promote the purposes served by the Department of Correction. Any contract made under the authority of this section shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts for receiving federal, county, and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund to compensate for the additional care and maintenance of such prisoners as are received under such contracts. (1933, c. 172, s. 19; 1957, c. 349, s. 10; 1967, c. 996, s. 8.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-40. Recapture of escaped prisoners.—The rules and regulations for the government of the State prison system may provide for the recapture of convicts that may escape, or any convicts that may have escaped from the State's prison or prison camps, or county road camps of this State, and the State Department of Correction may pay to any person recapturing an escaped convict such reward or expense of recapture as the regulations may provide. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody and deliver him to the State Department of Correction. (1933, c. 172, s. 21; 1955, c. 238, s. 8; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first and second sentences.

§ **148-41. Recapture of escaping prisoners; reward.**—The Commissioner of Correction shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the State prisons, camps, or farms. When any person who has been confined or placed to work escapes from the State prison system, the Commissioner shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem desirable and necessary for the recapture and return to the State prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the State Department of Correction and accounted for as a part of the expense of maintaining the State's prisons. (1873-4, c. 158, s. 13; Code, s. 3442; Rev., s. 5407; 1917, c. 236; c. 286, s. 13; C. S., ss. 7742, 7743; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409; 1955, c. 238, s. 9; c. 279, s. 3; 1957, c. 349, s. 10; 1967, c. 996, ss. 13, 15.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the fourth sentence and substituted "Commissioner of Correction" for "Director of Prisons" in the first sentence and substituted "Commissioner" for "Director" in the second sentence.

§ **148-42. Indeterminate sentences.**—The several judges of the superior court are authorized in their discretion in sentencing prisoners to imprisonment to commit the prisoner to the custody of the Commissioner of Correction for a minimum and maximum term. The maximum term imposed shall not exceed the limit otherwise prescribed by law for the offense of which the person is convicted. At any time after the prisoner has served the minimum term less earned allowances for good behavior, the Commissioner is authorized to discharge such person unconditionally or release him from confinement under conditions prescribed by the Commissioner. The conditions of release may be modified or the conditional release may be revoked by the Commissioner of Correction at any time during the period the person is committed to the Commissioner's custody, but the total time served in confinement and on conditional release shall not exceed the maximum term for which he was sentenced to the custody of the Commissioner of Correction. If a conditional release is revoked, the revocation order shall constitute authority for any prison, parole, or peace officer to arrest the prisoner without a warrant and return him to a facility of the State prison system. The Commissioner shall consult with the Board of Paroles on the exercise of his discretionary authority under this section, and the Board is authorized to cooperate with the Commissioner in the implementation of agreed upon conditional release plans. (1933, c. 172, s. 24; 1955, c. 238, s. 9; 1967, c. 996, s. 9.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

For a brief comparison of criminal law sanctions in two civil rights cases, see 43 N.C.L. Rev. 667 (1965).

§ 148-44. Separation as to sex and age.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 148-45. Escaping or assisting escape from the State prison system; escape by conditionally and temporarily released prisoners.—(a) Any prisoner serving a sentence imposed upon conviction of a misdemeanor who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one year. Any prisoner serving a sentence imposed upon conviction of a felony who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than two years. Any prisoner convicted of escaping or attempting to escape from the State prison system who at any time subsequent to such conviction escapes or attempts to escape therefrom shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than three years Any prisoner who connives at, aids or assists other prisoners to escape or attempt to escape from the State prison system shall be guilty of a misdemeanor and, upon conviction thereof shall be imprisoned at the discretion of the court. Unless otherwise specifically ordered by the presiding judge, any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the prisoner is held at the time an offense defined by this section is committed by such prisoner. Any prisoner convicted of an escape or attempt to escape classified as a felony by this section shall be immediately classified and treated as a convicted felony even if such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(b) Any defendant convicted and in the custody of the North Carolina Department of Correction and ordered or otherwise assigned to work under the work-release program, G.S. 148-33.1, or any convicted defendant in the custody of the North Carolina Department of Correction and on a temporary parole by permission of the State Board of Paroles or other authority of law, who shall fail to return to the custody of the North Carolina Department of Correction, shall be guilty of the crime of escape and subject to the provisions of subsection (a) of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, wilful failure to return to an appointed place and at an appointed time as ordered. (1933, c. 172, s. 26; 1955, c. 279, s. 2; 1963, c. 681; 1965, c. 283; 1967, c. 996, s. 13.)

Editor's Note.—

The 1965 amendment added "Unless otherwise specifically ordered by the presiding judge" at the beginning of the fifth sentence in subsection (a).

The 1967 amendment, effective Aug. 1, 1967, substituted "Department of Correction" for "Prison Department" in three places in the first sentence of subsection (b).

There are two classes of escape from the State prison system. One is a felonious escape and the other is a misdemeanor. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Subsection (b) Creates Distinct Offense.—Subsection (b), while providing the same penalties listed in subsection (a), creates a new and distinct offense which can only be committed by a work-release prisoner or a convicted defendant temporarily on parole. State v. Kimball, 261 N.C. 582, 135 S.E.2d 568 (1964); State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969).

Offense under Subsection (b) and under § 14-255 Distinguished.—A defendant's contention that he should have been tried for escape under § 14-255 rather than under this section is without merit where the evidence shows that when he escaped defendant was in the custody of the State Department of Correction and was under the supervision of a foreman for the State Highway Department, and there is no evidence that defendant was being hired out by a county, city or town under the provisions of § 14-255. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Prisoners Hired by Highway Commission Are within Prison System.—Prisoners hired by the State Highway Commission to work on the highways of the State are within the prison system when the agents of the Highway Commission have been designated to receive and work such prisoners. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

An escape from custody authorized by law is a crime against public justice. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

Citizen Should Yield Obedience to Law.—The statute declaring escape from custody to be an offense proceeds from the theory that a citizen should yield obedience to the law. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

Thus, Person Confined by Law Must Submit.—When one has been, by authority or command of the law, confined in prison, it is his duty to submit to such confinement until delivered by due course of law, no matter whether he has been committed for a future trial, or for punishment after conviction. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

It would bring the law into disrepute and completely render prison order and discipline unenforceable if prisoners convicted of crime could exercise the right of self-judgment and self-help and be allowed to escape from imprisonment, either because they believe themselves to be innocent, or that their convictions were obtained through legal error. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

He Is Liable for Escape Whether Innocent or Not.—It is generally held by the more modern authorities that it is immaterial whether a prisoner is innocent or guilty of the original offense insofar as his liability for escaping is concerned. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

When a prisoner is held in legal custody and commits an escape, the crime itself does not depend upon whether he would have been adjudged guilty or innocent of the original offense had the proper procedure for appeal been followed. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

And Whether or Not Conviction Is Later Held Void.—The crime of escape does not depend upon whether it may or may not be determined in a future habeas corpus proceeding that his original conviction was void for defects in the judgment of conviction by a court of competent jurisdiction. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

There is no deprivation of federal constitutional rights in the State's trial of a prisoner for an escape from an invalid sentence. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

A defendant can be tried and sentenced on the charge of escape irrespective of the outcome of a new trial. State v. Warren, 4 N.C. App. 441, 167 S.E.2d 858 (1969).

North Carolina has held that a prisoner escaping while serving a sentence is not immune to punishment for the escape even though the sentence he was serving at the time of the escape was irregular or voidable and is set aside and a new trial ordered after the escape but prior to imposition of sentence for the escape, since a prisoner serving a sentence imposed by authority of law may not defy that authority but must seek redress in compliance with due process. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

The deprivation of procedural rights before or during imprisonment does not constitute grounds for, or justification for, an escape by a prisoner serving a sentence imposed by authority of law. This is so even though the sentence the prisoner was serving at the time was later held to be irregular or voidable. A prisoner in such case may not put himself in defiance of the duly constituted authorities by escaping from custody but must seek redress in compliance with due process. State v. Warren, 4 N.C. App. 441, 166 S.E.2d 858 (1969).

A second escape is a felony, punishable by imprisonment for not less than six months nor more than three years, irrespective of whether the original sentence was imposed upon conviction of a misdemeanor or of a felony. State v. Worley, 268 N.C. 687, 151 S.E.2d 618 (1966).

A murder committed in the perpetration or attempt to perpetrate a felonious escape is murder in the first degree. State v. Lee, 277 N.C. 205, 176 S.E.2d 765 (1970).

Sufficiency of Indictment.—

In accord with original. See State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965); State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

An indictment charging that defendant escaped from lawful custody while serving a sentence for a felony imposed in the superior court of a named county is sufficient without naming the felony for which defendant was imprisoned, and reference in the indictment to the felony is surplusage.

State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

Where defendant contended that the warrant was defective in that it did not allege: (1) The year of defendant's conviction in Craven County; (2) the length of the sentence imposed; (3) the number of defendant's commitment from Craven County; and (4) the trial docket number of the case in which the commitment was issued, it was held that such detailed information was not required to charge an offense under this section. State v. Harper. 264 N.C. 354, 141 S.E.2d 475 (1965).

A felony conviction for a second or subsequent offense is not permissible, and punishment therefor may not be imposed, unless the indictment alleges facts showing that the offense charged is a second offense. State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965).

The mere words "second offense" are not sufficient allegation of facts to charge the felony—time and place of conviction of the prior offense must be alleged. State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965).

A bill of indictment charging that the defendant: ". . . (O)n the 18th day of October, 1965, with force and arms, and in the County aforesaid (Montgomery), while he . . . was then and there lawfully confined in the North Carolina State Prison System in the lawfully (sic) custody of the Superintendent of State Prison Unit #042, Troy, North Carolina, and while then and there serving a sentence for the crime of . . . Larceny (sic) . . . Escape which is a Misdemeanor under the laws of the State of North Carolina, imposed at the August 4 1965 Term General County Court, and September 23, 1965 term Recorders Court, Henderson and Montgomery Counties, then and there unlawfully, willfully, and feloniously did attempt to escape and escaped from the said State Prison Unit #042 Troy, North Carolina against the form of the Statute in such case made and provided, and against the peace and dignity of the State," does not properly charge a felonious escape because it nowhere refers to "previous conviction of escape from the State Prison System" which is one of the elements necessary under this section. However, it will support a charge of an escape a misdemeanor. State v. Revis, 267 N.C. 255, 147 S.E.2d 892 (1966).

The words "third offense," even if included in the body of the indictment, are not sufficient to charge the offense of felonius escape, it being necessary also to allege in the indictment facts showing that at a certain time and place the defendant was convicted of the previous offense or offenses. State v. Bennett, 271 N.C. 423, 156 S.E.2d 725 (1967).

Arrest of Judgment for Defective Indictment Does Not Bar Further Prosecution.—Arrest of judgment on the ground that the bill of indictment is fatally defective does not bar further prosecution for a violation of this section if the solicitor deems it advisable to proceed on a new bill. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

Nor Does Mistrial on Such Ground.—Where the indictment on its face negatived any possibility of a showing that at the time of the alleged escape the defendant was serving a sentence in prison, such indictment was fatally defective, the action of the court in ordering a mistrial was tantamount to quashing the bill of indictment, which the trial court had the right to do ex mero motu, and the defendant's conviction on a second bill of indictment is valid and a plea of former jeopardy is properly overruled. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

Proof of Lawfulness of Custody and Type of Offense for Which Defendant Committed.—In order to sustain a conviction of a defendant for the offense of escape under this section, the State must prove, among other things, from the evidence and beyond a reasonable doubt that at the time of the escape the defendant was in the lawful custody of the State Department of Correction and was serving a sentence imposed upon a plea of guilty, a plea of nolo contendere, or a conviction for a felony. A properly certified copy of the commitment is competent, when introduced into evidence, to show the lawfulness of the custody and the type of offense for which he was committed. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Evidence Admissible to Show Defendant Was in Lawful Custody.—Certified copies of the record of the superior court showing defendant's conviction and sentence, or a commitment issued under the hand and official seal of the clerk of the superior court, are admissible for the purpose of showing that defendant was in lawful custody at the time of the alleged escape. State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

Nature of Offense for Which Defendant Committed as Question for Jury.—A defendant who has committed an escape is entitled to have his case submitted to the jury on the question of whether he was imprisoned while serving a sentence imposed for a felony or for a misdemeanor.

State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Prejudicial Error Not to Charge Jury That It Must Find Defendant Was Serving Sentence for Felony Conviction at Time of Escape. — Since the defendant's plea of not guilty put in issue every essential element of the crime charged, and the defendant was charged with escaping from the lawful custody of the State Department of Correction while then and there serving time for a felony, the trial judge's failure to instruct the jury that before they could convict the defendant of the felony of escape charged, they must find beyond a reasonable doubt that at the time of the escape he was serving a sentence imposed upon conviction of a felony, was prejudicial error which entitles the defendant to a new trial. State v. McCloud, 11 N.C. App. 425, 181 S.E.2d 204 (1971).

Verdict Must Show If Guilty of Offense Charged and If Convicted of Prior Violation.—The verdict must spell out (1) whether defendant is guilty of the specific violation charged and, if so, (2) whether he was convicted of a prior violation of such offense charged. State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965).

Erroneous Reference to Another Section in Judgment and Commitment Order Not Prejudicial. — The fact that the judgment and commitment order in an escape prosecution erroneously referred to § 148-48 instead of this section was not prejudicial to the defendant. State v. Cobb, 9 N.C. App. 51, 175 S.E.2d 381 (1970).

Punishment Is in Accordance with Conviction of First or Second Offense.—The accused may be convicted or plead guilty to the specific violation charged—a misdemeanor—or he may be convicted or plead guilty as in case of a second offense —a felony. Punishment is in accordance with the conviction or plea. State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965).

Sentence of 12 Months Not Cruel and Unusual Punishment. — A sentence of imprisonment for 12 months for felonious escape under this section does not constitute cruel and unusual punishment, in violation of N.C. Const., Art. I, § 14 and the Eighth Amendment to the Constitution of the United States. State v. Dixon, 5 N.C. App. 514, 168 S.E.2d 418 (1969).

A sentence of one year is not excessive under this section. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965).

When Sentence Begins.—Prior to the 1965 amendment, it was mandatory that a sentence for escape begin at the expiration of the sentence defendant was then serving. State v. Doggett, 267 N.C. 648, 148 S.E.2d 622 (1966).

Applied in State v. Gibson, 265 N.C. 487, 144 S.E.2d 402 (1965); State v. Elliott, 269 N.C. 683, 153 S.E.2d 330 (1967); State v. Morgan, 272 N.C. 97, 157 S.E.2d 606 (1967); State v. Faison, 272 N.C. 146, 157 S.E.2d 664 (1967); State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968); State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968); State v. Collins, 273 N.C. 479, 160 S.E.2d 291 (1968); State v. Allison, 1 N.C. App. 623, 162 S.E.2d 63 (1968): State v. Jones, 3 N.C. App. 69, 163 S.E.2d 910 (1968); State v. Ruffin, 3 N.C. App. 307, 164 S.E.2d 503 (1968); State v. Rogers, 7 N.C. App. 572, 172 S.E.2d 883 (1970); State v. Foster, 8 N.C. App. 67, 173 S.E.2d 577 (1970); State v. Ware, 10 N.C. App. 179, 177 S.E.2d 764 (1970).

Quoted in State v. Hunt, 265 N.C. 714, 144 S.E.2d 890 (1965).

Stated in Gainey v. Turner, 266 F. Supp. 95 (E.D.N.C. 1967).

Cited in State v. Sutton, 268 N.C. 165, 150 S.E.2d 50 (1966); State v. Alphin, 7 N.C. App. 75, 171 S.E.2d 53 (1969); State v. Jones, 9 N.C. App. 726, 177 S.E.2d 311 (1970).

§ 148-46.1. Inflicting or assisting in infliction of self-injury to prisoner resulting in incapacity to perform assigned duties.—Any person serving a sentence or sentences within the State prison system who, during the term of such imprisonment, wilfully and intentionally inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Department of Correction, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the State's prison for a term not exceeding ten years in the discretion of the court. (1959, c. 1197; 1967, c. 996, s. 13.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department."

§ 148-48. Parole powers of Board of Paroles unaffected.

Erroneous Reference to Statute under Which Defendant Committed. — It is not prejudicial to the defendant where, in the judgment and commitment as it appeared in the record, the statute under which the defendant was convicted was erroneously referred to as "G.S. 148.48" instead of § 148-45. State v. Cobb, 9 N.C. App. 51, 175 S.E.2d 381 (1970).

ARTICLE 3A.

Facilities and Programs for Youthful Offenders.

§ 148-49.1. Purpose of article.—The purposes of this article are to improve the chances of correction, rehabilitation and successful return to the community of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals, and by closer coordination of the activities of sentencing, training in custody, conditional release, and final discharge. It is the intent of this article to provide the courts with an additional sentencing possibility to be used in the court's discretion for correctional punishment and treatment in cases where, in the opinion of the court, a youthful offender requires a period of imprisonment, but no longer than necessary for the Board of Paroles to determine that the offender is suitable for a return to freedom and is ready for a period of supervised freedom as a step toward unconditional discharge and restoration of the rights of citizenship. (1949, c. 297, s. 1; 1951, c. 250; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

Section 13, c. 996, Session Laws 1967, provides that the words "State Department of Correction" or "Department of Correction" as the context may require shall be substituted for the words "State Prison Department" or "Prison Department" each time that the latter appear in any sections of the General Statutes of North Carolina, except as otherwise provided in the act.

Section 14 of c. 996 provides that the words "Commission of Correction" shall be substituted for the words "State Prison Commission" or "Prison Commission" each time that the latter appear in any sections of the General Statutes of North Carolina, except as otherwise provided in the act.

Section 15 of c. 996 provides that the words "Commissioner of Correction" shall be substituted for the words "Director of Prisons" each time the latter appear in any section of the General Statutes of North Carolina, except as otherwise provided in the act.

Applied in State v. Johnson, 5 N.C. App. 469, 168 S.E.2d 709 (1969).

§ 148-49.2. Definitions.—As used in this article, a "youthful offender" is a person under the age of 21 at the time of conviction, and a "committed youthful offender" is one committed to the custody of the Commissioner of Correction under the provisions of this article. Inmates of the State prison system segregated as youthful offenders on July 31, 1967, under the provisions of article 21 of chapter 15 of the General Statutes of North Carolina, or who shall be so sentenced prior to August 1, 1967, but who begin to serve such sentences after that date, shall be extended the benefits of this article as far as practicable and consistent with their sentences. (1949, c. 297, s. 2; 1967, c 996, s. 10.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-49.3. Presentence diagnostic studies.—Upon conviction of a youthful offender of an offense punishable by imprisonment, the court may request the Department of Correction to make a presentence diagnostic study of the offender. Where necessary for this purpose, the Department may admit the offender to an appropriate diagnostic and classification center for such period of study as the court may authorize. Within such period as the court may grant, the Department shall report to the court its findings. The time a youthful offender spends confined for a presentence diagnostic study shall not exceed 90 days or the maximum term of imprisonment authorized as punishment for the offense of which the person has been convicted if the maximum is less than 90 days, and this time shall be credited on any sentence of commitment imposed on the offender. A copy of the diagnostic study report shall be made available to defense counsel before the court pronounces sentence. The defendant shall be afforded an opportunity to controvert the contents of the report, if he so requests. (1949, c. 297, s. 3; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ **148-49.4. Sentencing a youthful offender.**—When a youthful offender is convicted of an offense punishable by imprisonment, and the court does not suspend the imposition or execution of sentence and place the offender on probation, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youthful offender to the custody of the Commissioner of Correction for treatment and supervision pursuant to this article until discharged at the expiration of the maximum term imposed or until conditionally released or unconditionally discharged by the Board of Paroles as provided in this article. At the time of commitment the court shall fix a maximum term not to exceed the limit otherwise prescribed by law for the offense of which the person is convicted. When the maximum permitted penalty for the offense is imprisonment for one year or longer, the maximum term imposed shall not be for less than one year. If the court shall find that the youthful offender will not derive benefit from treatment and supervision pursuant to this article, then the court may sentence the youthful offender under any other applicable penalty provision. (1949, c. 297, s. 4; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

Consecutive sentences of two years' imprisonment, each of which was imposed upon a youthful offender's pleas of guilty to nonfelonious breaking and entering and to felonious larceny, are not cruel and excessive punishment. State v. Jones, 10 N.C. App. 184, 177 S.E.2d 727 (1970).

Applied in State v. Pulley, 5 N.C. App. 285, 168 S.E.2d 62 (1969).

§ **148-49.5. Classification studies.**—Every committed youthful offender shall first be sent to a diagnostic and classification center for a complete study, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school and family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency and criminal activities. All agencies of State and local government in North Carolina shall cooperate with the State Department of Correction in supplying or verifying information helpful for diagnosis, classification, and program planning for committed youthful offenders. A report of the findings and recommendations of the diagnostic and classification center shall be sent to the Commissioner of Correction and to the Board of Paroles. (1949, c. 297, s. 5; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ **148-49.6. Placement of youthful offenders.**—On receipt of the report and recommendations from the diagnostic and classification center, the Commissioner of Correction may (i) recommend to the Board of Paroles that the committed youthful offender be released conditionally under supervision, (ii) order the committed youthful offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public. The Commissioner of Correction shall have authority to terminate the segregation and treatment as a committed youthful offender of any prisoner who, in the opinion of the Commissioner, exercises a bad influence upon his fellow prisoners, or fails to take proper advantage of the opportunities offered by such segregation and treatment. (1953, c. 1249; 1963, c. 1166, s. 10; 1967, c. 996, s. 10.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-49.7. Treatment of youthful offenders.—(a) The Commissioner of Correction shall from time to time designate and adapt facilities under his control for treatment of committed youthful offenders, and such youthful offenders shall be segregated from other offenders, and classes of committed youthful offenders shall be segregated according to their needs for treatment, insofar as practical. The Commissioner of Correction shall, insofar as possible, provide personnel specially qualified by training, experience, and personality to operate facilities for committed youthful offenders.

(b) The State Department of Mental Health is authorized to establish and construct on any property of the State under its supervision and control modern facilities where youthful offenders committed to the custody of the Commissioner of Correction may be sent for treatment, training, and work under rules and regulations jointly adopted by the State Department of Mental Health and the State Department of Correction. The plans, specifications and construction of such facilities shall meet the requirements of the Commissioner of Correction. The cost of the maintenance of committed youthful offenders assigned to such facilities by the Commissioner of Correction and employed in work for the benefit of the Department of Mental Health shall be borne by the State Department of Mental Health. The committed youthful offenders assigned to such facilities shall be under the care and supervision of agents and employees of the State Department of Correction or of agents and employees of the State Department of Correction or of agents and employees of the State Department of Mental Health as may be agreed upon by the two State agencies. The Department of Correction may provide, in cooperation with the Department of Mental Health, for the payment of wages to the committed youthful offenders for the work they do while assigned to such facilities.

(c) Committed youthful offenders may be required to participate in vocational, educational and correctional training and activities. Appropriate use shall be made of other methods of treatment, including medical and psychiatric. The Commissioner of Correction may extend the limits of the place of confinement of a committed youthful offender as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time for any purpose consistent with the public interest. Willful failure to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Commissioner of Correction, shall be deemed an escape from the custody of the Commissioner as provided in G.S. 148-45.

(d) The Commissioner of Correction may contract with any appropriate public or private agency not under his control for treatment and training services to committed youthful offenders when this is the most economical or effective way to provide needed services. (1967, c. 996, s. 10.)

Editor's Note.—The act adding this section became effective Aug. 1, 1967.

§ 148-49.8. Release of youthful offenders.—(a) When, in the judgment of the Commissioner of Correction, a committed youthful offender is ready for conditional release under supervision, the Commissioner shall so report to the Board of Paroles with his recommendations. The Board of Paroles may at any time after reasonable notice to the Commissioner of Correction release conditionally under supervision a committed youthful offender.

(b) A committed youthful offender shall be released conditionally under supervision on or before the expiration of four years from the date of his commitment and may be discharged unconditionally before the expiration of the maximum term imposed.

(c) The Board of Paroles may revoke or modify any of its orders respecting a committed youthful offender except an order of unconditional discharge. Upon the unconditional discharge by the Board of Paroles of a committed youthful offender before the expiration of the maximum sentence imposed upon him, all rights of citizenship which he forfeited on conviction shall be automatically restored and the Board of Paroles shall issue to the youthful offender a certificate to that effect. (1967, c. 996, s. 10.)

Editor's Note. — The act adding this section became effective Aug. 1, 1967.

§ 148-49.9. Supervision of released youthful offenders.—(a) Committed youthful offenders conditionally released shall be under the supervision of agents and employees of the Board of Paroles. The Board of Paroles is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by rules and regulations adopted by the Board of Paroles.

(b) If, at any time before the unconditional discharge of a committed youthful offender, the Board of Paroles is of the opinion that such youthful offender will be benefited by further treatment in a facility for committed youthful offenders, any member of the Board may direct the offender's return to custody or, if necessary, may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a State parole officer or by any officer of the State Department of Correction, using the assistance of any law-enforcement officer when necessary. Upon return to custody, such youthful offender shall be given an opportunity to appear before the Board of Paroles or a member thereof. The Board of Paroles may then or at its discretion revoke the order of conditional release. (1967, c. 996, s. 10.)

Editor's Note. — The act adding this section became effective Aug. 1, 1967.

ARTICLE 4.

Paroles.

§ 148-51.1. "Board of Paroles" substituted for "Commissioner of Paroles" in statutes.

State Government Reorganization.—The Board of Paroles was transferred to the Department of Social Rehabilitation and Control by § 143A-168, enacted by Session Law 1971, c. 864.

§ 148-52. Appointment of Board of Paroles; members; duties; quorum; salary.

Cited in State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969).

§ 148-58. Time of eligibility of prisoners to have cases considered.

Time spent in jail by a prisoner serving a life sentence, between his first conviction and the dismissal of his final appeal, must be credited toward his parole eligibility date. Wilson v. North Carolina, 438 F.2d 284 (4th Cir. 1971).

A prisoner may have the time he spends in jail pursuing appeals and awaiting retrial taken into account in determining when he can be considered for parole. Wilson v. North Carolina, 438 F.2d 284 (4th Cir. 1971).

The length of time a prisoner serving a life sentence was imprisoned, from the date of his first conviction to the date his sentence began to run following affirmance of his second appeal, must be included in computing the statutory period of 10 years which he must serve before he can be considered for commutation. Wilson v. North Carolina, 438 F.2d 284 (4th Cir. 1971).

Punishment Already Exacted. — The constitutional guarantee against double jeopardy absolutely requires that punishment already exacted must be fully credited in imposing sentence upon a new conviction for the same offense. Wilson v. North Carolina, 438 F.2d 284 (4th Cir. 1971).

Denial of credit to a prisoner for the time he spent in jail from the date of his first conviction until the affirmance of his second appeal is multiple punishment. Such time must be fully credited insofar as possible as "punishment already exacted." Although it cannot be credited against his life sentence, which by its very nature is indefinite, it can be credited toward the 10 years he must wait to be considered for parole. Wilson v. North Carolina, 438 F.2d 284 (4th Cir. 1971).

Quoted in Lassiter v. Turner, 279 F. Supp. 231 (E.D.N.C. 1968).

Stated in Patton v. North Carolina, 256 F. Supp. 225 (W.D.N.C. 1966).

Cited in State v. Johnson, 275 N.C. 264, 167 S.E.2d 274 (1969).

§ 148-59. Duties of clerks of all courts as to commitments; statements filed with Board of Paroles.—The several clerks of the superior courts and the clerks of all inferior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Board of Paroles shall by regulations prescribe, which information shall contain, among other things, the following:

(1) The court in which the prisoner was tried;
(2) The name of the prisoner and of all codefendants;
(3) The date or term when the prisoner was tried;
(4) The offense with which the prisoner was charged and the offense for which convicted;
(5) The judgment of the court and the date of the beginning of the sentence;
(6) The name and address of the presiding judge;
(7) The name and address of the prosecuting solicitor;
(8) The name and address of private prosecuting attorney, if any;
(9) The name and address of the arresting officer; and
(10) All available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Board of Paroles, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Department of Correction without charge. (1935, c. 414, s. 9; 1953, c. 17, s. 2; 1955, c. 867, s. 12; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the last sentence.

Applied in State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969).

§ 148-60. Time for release of prisoners discretionary.

Matters to Be Considered by Board. — The legislature specified in this section the matters to which the Parole Board should give "due consideration" in exercising its discretion at the time of granting parole, and the same matters should be considered by the Board when exercising its discretionary power under § 148-62 to revoke a parole and to determine when service of the remainder of the sentence upon which parole was granted shall commence. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Rigid Guidelines Neither Necessary Nor Desirable.—In the matter of paroles, which historically, in this State at least, has been considered a function of the executive branch and which by its nature involves evaluation of a large number of intangibles, rigid guidelines are neither necessary nor desirable. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

§ 148-61.1. Revocation of parole by Board; conditional or temporary revocation.

Conditions of parole are a restraint upon a parolee's liberty not shared by the public generally. He is still under the supervision of the parole authorities and subject to be remanded if he fails to perform or violates the conditions of the parole. State v. Rhinehart, 267 N.C. 470, 148 S.E.2d 651 (1966).

Hence, Fact of Parole Does Not Affect Right to Review of Post-Conviction Relief Proceedings.—The fact that a defendant is on parole at the time of his application for certiorari to review an order denying him post-conviction relief does not affect his right to review by the Supreme Court (now the Court of Appeals). State v. Rhinehart, 267 N.C. 470, 148 S.E.2d 651 (1966).

§ 148-62. Discretionary revocation of parole upon conviction of crime.

Constitutionality.—This section does not contravene the Constitution of North Carolina. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

As to the mandate portion of this section, no question as to constitutional validity can validly be raised. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

This section embodies two legislative declarations. The first is a mandate that service of the remainder of the original sentence of one whose parole has been revoked by the Parole Board after his plea of guilty or conviction of an offense committed while at liberty on parole "shall commence from the termination of his liability upon said sentence for said new or fresh crime." The second is the portion of the statute which grants the Parole Board the power, in its discretion, to direct that the remainder of the original sentence shall be served concurrently with the sentence imposed for the new crime. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Power to Grant and to Revoke Paroles Originally Was Function of Executive Branch.—In this State the power to grant and to revoke paroles developed originally as a function of the executive branch of the government. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Purpose of Parole.—Parole is intended to be a means of restoring offenders who are good social risks to society; to afford the unfortunate another opportunity by clemency—under guidance and control of the Board. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Granting Discretionary Power to Board Does Not Constitute Assignment of Judicial Power. — This section, insofar as it grants discretionary power to the Board of Paroles, is not an assignment of judicial power to the Board of Paroles in contravention of N.C. Const., Art. IV, § 1, and Art. I, § 6. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Rigid Guidelines Neither Necessary Nor Desirable.—In the matter of paroles, which historically, in this State at least, has been considered a function of the executive branch and which by its nature involves evaluation of a large number of intangibles, rigid guidelines are neither necessary nor desirable. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Adequate Standards for Exercise of Discretion Provided. — This section does not deprive a defendant of liberty other than by the law of the land in that it fails to provide adequate standards to guide the Board of Paroles in exercise of the discretionary power granted to it. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Matters Which Parole Board Should Consider. — The legislature specified in § 148-60 the matters to which the Parole Board should give "due consideration" in exercising its discretion at the time of granting parole, and the same matters should be considered by the Board when exercising its discretionary power under this section to revoke a parole and to determine when service of the remainder of the sentence upon which parole was granted shall commence. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Parole Violator Can Be Required to Serve More Than Punishment for Offense Committed While on Parole. — Unless a parole violator can be required to serve some time in prison in addition to that imposed for an offense committed while on parole, he not only escapes punishment for the unexpired portion of his original sentence, but the disciplinary power of the Board will be practically nullified. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Board May Revoke Parole without Deprivation of Court's Power to Sentence. —Where the defendant is still on parole at the time he is convicted and sentenced for a new crime committed by him while on parole, the Board of Paroles may revoke the parole in its discretion, and there is no unconstitutional deprivation of the court's sentencing power in the additional discretion granted the Board by this section to determine whether the remainder of the first sentence must be served consecutively or concurrently with service of the second sentence. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

No Ironclad Right That Two Sentences Shall Run Concurrently.—The general presumption that two or more sentences shall run concurrently unless a statute or the court imposing the later sentences clearly specifies otherwise, gives rise to no ironclad constitutional right that they must in all cases do so. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Consecutive Sentence May Be Provided for Offense While on Parole.—A legislative body is not inhibited from providing that a sentence for an offense committed while at liberty on parole shall run consecutively with the unexpired portion of an original or prior term. Any such enactment is not in conflict with the inherent judicial power to impose consecutive or concurrent sentences. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Although Sentencing Judge Cannot Make Second Sentence Consecutive or Concurrent. — Where the defendant is still on parole at the time he is convicted and sentenced for a new crime committed by him while on parole, he is not under an active sentence at the time the second sentence is imposed, but has been released in the discretion of the Parole Board, and the second sentence cannot be made by the sentencing judge to be consecutive or concurrent to a sentence which is not then in effect. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

§ 148-64. Cooperation of prison and parole officials and employees.—The officials and employees of the Department of Correction and the Board of Paroles and its officers and employees shall at all times cooperate with and furnish each other such information and assistance as will promote the purposes of this chapter and the purposes for which these agencies were established. The Board of Paroles and its staff shall have free access to all prisoners. (1935, c. 414, s. 14; 1955, c. 867, s. 7; 1967, c. 996, ss. 11, 15.)

Editor's Note.—

Session Laws 1967, c. 996, s. 11, effective Aug. 1, 1967, rewrote this section as amended by Session Laws 1967, c. 996, s. 15.

ARTICLE 4A.

Out-of-State Parolee Supervision.

§ 148-65.1. Governor to execute compact; form of compact.

State Government Reorganization.—The administration of parolee supervision compacts was transferred to the Department of Social Rehabilitation and Control by § 143A-170, enacted by Session Laws 1971, c. 864.

ARTICLE 5.

Farming Out Convicts.

§ 148-66. Cities and towns and Board of Agriculture may contract for prison labor.—The corporate authorities of any city or town may contract in writing with the State Department of Correction for the employment of convicts upon the highways or streets of such city or town, and such conracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Board of Agriculture of the State of North Carolina is hereby authorized and empowered to contract, in writing, with the State Department of Correction for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations. (1881, c 127, s. 1; Code,

s. 3449; Rev., s. 5410; C. S., s. 7758; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first and second sentences.

§ 148-67. Hiring to cities and towns and State Board of Agriculture.—The State Department of Correction shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in § 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Department of Correction, in its discretion, to hire to the Board of Agriculture of the State of North Carolina for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Department of Correction. (1881, c. 127, s. 2; Code, s. 3450; Rev., s. 5411; C. S., s. 7759; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" throughout this section.

§ 148-70. Management and care of convicts; prison industries; disposition of products of convict labor.—The State Department of Correction in all contracts for labor shall provide for feeding and clothing the convicts and shall maintain, control and guard the quarters in which the convicts live during the time of the contracts; and the Department shall provide for the guarding and working of such convicts under its sole supervision and control. The Department may make such contracts for the hire of the convicts confined in the State prison as may in its discretion be proper and will promote the purpose and duty to make the State prison as nearly self-supporting as is consistent with the purposes of its creation, as set forth in § 11, article XI of the Constitution. The Department may use the labor of convicts confined in the State prison in such work on farms, in manufacturing, either within or without the State prison, as the Department may find proper and profitable to be carried on by the State prison; and the Department may dispose of the products of the labor of the convicts, either in farming or in manufacturing or in other industry at the State prison, to or for any public institution owned, managed, or controlled by the State, or to or for any county, city or town in the State; and the Department may sell or dispose of the same elsewhere and in the open markets or otherwise, as in its discretion may seem profitable.

All departments, institutions and agencies of this State which are supported in whole or in part by the State shall give preference to Department of Correction products in purchasing articles and commodities which these departments, institutions, and agencies require and which are manufactured or produced within the State prison system and offered for sale to them by the Department of Correction, and no article or commodity available from the Department of Correction shall be purchased by any such State department, institution, or agency from any other source without permission of the board of award provided for in G.S. 143-52, unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the board of award, or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of article 3 of chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials and equipment required by the State government or any of its departments, institutions or agencies under competitive bidding shall not apply to articles or commodities available from the Department of Correction, but the Department of Correction shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the board of award or with competitive bids which the board of award may in its discretion require, taking into consideration the best interest of the State as a whole. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C. S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1959, c. 170, s. 2; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" and "Department of Correction" for "Prison Department" throughout this section.

The reference to the Constitution in this section is to the Constitution adopted in 1868, as amended.

ARTICLE 7.

Records, Statistics, Research and Planning.

§ 148-74. Records Section.—Case records and related materials compiled for the use of the Commissioner of Correction and the Board of Paroles shall be maintained in a single central file system designed to minimize duplication and maximize effective use of such records and materials. When an individual is committed to the State prison system after a period on probation, the probation files on that individual shall be made a part of the combined files used by the Department of Correction and the Board of Paroles. The Director of Probation shall cooperate with the Commissioner of Correction and the chairman of the Board of Paroles in joint efforts aimed at developing accurate and comprehensive case records on individual offenders. The administration of the Records Section shall be under the control and direction of the Director of Probation, the Commissioner of Correction, and the chairman of the Board of Paroles. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4; 1967, cc. 996, c. 12.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

Section 13, c. 996, Session Laws 1967, provides that the words "State Department of Correction" or "Department of Correction" as the context may require shall be substituted for the words "State Prison Department" or "Prison Department" each time that the latter appear in any sections of the General Statutes of North Carolina, except as otherwise provided in the act.

Section 14 of c. 996 provides that the words "Commission of Correction" shall be substituted for the words "State Prison Commission" or "Prison Commission" each time that the latter appear in any sections of the General Statutes of North Carolina, except as otherwise provided in the act.

Section 15 of c. 996 provides that the words "Commissioner of Correction" shall be substituted for the words "Director of Prisons" each time the latter appear in any section of the General Statutes of North Carolina, except as otherwise provided in the act.

Cited in Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

§ 148-76. Duties of Records Section.—The Records Section shall maintain the combined case records and receive and collect fingerprints, photographs, and other information to assist in locating, identifying, and keeping records of criminals. The information collected shall be classified, compared, and made available to law-enforcement agencies, courts, correctional agencies, or other officials requiring criminal identification, crime statistics, and other information respecting crimes and criminals. (1925, c. 228, s. 3; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

Editor's Note.—The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-77. Statistics, research, and planning.—In order to facilitate regular improvement in the structure, administration, and programs of the Department of Corrections, there shall be established within the Department organizational units responsible for statistics, research, and planning. The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs to compile and analyze statistics and to conduct research in criminology and correction. (1925, c. 228, s. 4; 1967, c. 996, s. 12.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-78. Reports.—The Commissioner of Correction may prepare and release reports on the work of the Department of Correction, including statistics and other data, accounts of research, and recommendations for legislation. (1925, c. 228, s. 5; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

Editor's Note.—The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-79: Repealed by Session Laws 1965, c. 1049, s. 2.

Cross Reference. — For present provisions authorizing chiefs of police and sheriffs to take fingerprints and photographs of suspects and convicts, see § 114-19.

§ 148-80. Seal of Records Section; certification of records. — A seal shall be provided to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records of the Records Section, and when so certified under seal by the duly appointed custodian, such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

Editor's Note.—The 1967 amendment, effective Aug. 1, 1967, rewrote this section.

§ 148-81: Repealed by Session Laws 1965, c. 1049, s. 2.

ARTICLE 10.

Interstate Agreement on Detainers.

§ 148-89. Agreement on detainers entered into; form and contents.—This Agreement on Detainers is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows: The contracting states solemnly agree:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: And provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be effected thereby. If this agreement shall be held contrary to the constitution of any state party hereto. the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1965, c. 295, s. 1.)

Editor's Note.—The act inserting this article became effective July 1, 1965.

State Government Reorganization.—The administration of the Interstate Agreement on Detainers was transferred to the Department of Social Rehabilitation and Control by § 143A-169, enacted by Session Laws 1971, c. 864.

"Untried Indictment, Information or Complaint".—Where a fugitive warrant was not based upon a warrant charging the offense of escape, but was to secure the return of the defendant to serve the unexpired portion of sentences already imposed, the defendant had no "untried indictment, information or complaint" pending against him. State v. Pfeifer, 11 N.C. App. 183, 180 S.E.2d 469 (1971).

The defendant cannot complain of delay in his trial when caused by his own motion. State v. George, 271 N.C. 438, 156 S.E.2d 845 (1967).

Inability of Jury to Agree on Verdict.—Article III (a) of this section requires that the defendant be brought to trial within one hundred eighty days after he has given the appropriate notice to the solicitor. The State, of course, cannot control the fact that a jury is unable to agree upon a verdict and is not chargeable with responsibility under these conditions. State v. George, 271 N.C. 438, 156 S.E.2d 845 (1967).

Applicability of Article IV (c).—Article IV (c), requiring a prisoner to be tried within one hundred twenty days after his arrival in North Carolina, can be invoked only when the prisoner has been returned to the State at the request of the solicitor. It does not apply where the prisoner was brought back to North Carolina upon his own request and not that of the solicitor. State v. George, 271 N. C. 438, 156 S.E.2d 845 (1967).

Cited in Pitts v. North Carolina, 395 F.2d 182 (4th Cir. 1968).

Stated in Pitts v. North Carolina, 267 F. Supp. 870 (M.D.N.C. 1967).

§ **148-90. Meaning of "appropriate court".**—The phrase "appropriate court" as used in the Agreement on Detainers shall, with reference to the courts of this State, mean court of record with criminal jurisdiction. (1965, c. 295, s. 2.)

§ **148-91. Cooperation in enforcement.**—All courts, departments, agencies, officers and employees of this State and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose. (1965, c. 295, s. 3.)

§ **148-92. Escape from temporary custody.** — Any prisoner released to temporary custody under the provisions of the Agreement on Detainers from a place of imprisonment in North Carolina who shall escape or attempt to escape from such temporary custody, whether within or without the borders of this State, shall be dealt with in the same manner as if the escape or attempt to escape were from the original place of imprisonment. (1965, c. 295, s. 4.)

§ **148-93. Authority and duty of official in charge of institution.**—It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this State to give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers (1965, c. 295, s 5.)

§ **148-94. Designation of central administrator of and information agent for agreement.**—The Governor is hereby authorized and empowered to designate the officer who shall serve as central administrator of and information agent for the Agreement on Detainers, pursuant to the provisions of Article VII of the agreement. (1965, c. 295, s. 6.)

§ **148-95. Distribution of copies of article.**—Copies of this article shall, upon its approval, be transmitted to the governor of each state, the Attorney General and the Administrator of General Services of the United States, and the Council of State governments. (1965, c. 295, s. 7.)

Chapter 150.

Uniform Revocation of Licenses.

Sec.
150-9. Definition of "board".

§ 150-9. Definition of "board". — As used in this Chapter the term "board" shall mean the State Board of Certified Public Accountant Examiners, the North Carolina Board of Architecture, the State Board of Barber Examiners, the State Board of Chiropody Examiners, the North Carolina State Board of Chiropractic Examiners, the North Carolina Licensing Board for Contractors, the North Carolina State Board of Cosmetic Art Examiners, the North Carolina Pesticide Board, the Board of Examiners of Electrical Contractors, the State Board of Embalmers and Funeral Directors, the State Board of Registration for Engineers and Land Surveyors, the North Carolina Board of Nurse Examiners, and the North Carolina Board of Nurse Examiners Enlarged, the North Carolina Board of Opticians, the North Carolina State Board of Examiners in Optometry, the North Carolina State Board of Osteopathic Examination and Registration, the State Board of Examiners of Plumbing and Heating Contractors, the State Examining Committee of Physical Therapists, the Board of Examiners for Licensing Tile Contractors, the North Carolina Veterinary Medical Board, the North Carolina State Board of Dental Examiners, the North Carolina Real Estate Licensing Board, the State Board of Refrigeration Examiners, the North Carolina State Board of Examiners for Nursing Home Administrators, the North Carolina State Board of Examiners of Practicing Psychologists, the Water Treatment Facility Operators Board of Certification, the Wastewater Treatment Plant Operators Board of Certification, and the North Carolina Board of Landscape Architects. (1953, c. 1093; 1959, c. 1207; 1967, c. 452; c. 910, s. 21; c. 1031; 1969, c. 843, s. 2; c. 1059, s. 4; 1971, c. 832, s. 3; c. 1093, s. 9.)

Editor's Note.—

The first 1967 amendment inserted "the North Carolina State Board of Dental Examiners," the second 1967 amendment, effective July 1, 1967, inserted "the North Carolina State Board of Examiners of Practicing Psychologists" and the third 1967 amendment, effective July 1, 1967, inserted "the North Carolina Real Estate Licensing Board" in the list of boards.

The first 1969 amendment, effective July 1, 1969, inserted "the North Carolina State Board of Examiners for Nursing Home Administrators."

The second 1969 amendment, effective July 1, 1969, added "the Water Treatment Facility Operators Board of Certification and the Wastewater Treatment Plant Operators Board of Certification."

The first 1971 amendment, effective Oct. 1, 1971, inserted "the North Carolina Pesticide Board."

The second 1971 amendment substituted "North Carolina Board of Architecture" for "State Board of Architectural Examination and Registration," substituted "Veterinary Medical Board" for "Board of Veterinary Medical Examiners," deleted "and" following "Nursing Home Administrators," deleted "and" preceding "the Wastewater Treatment," and added "and the North Carolina Board of Landscape Architects."

Trustees of University Are Not Agency Governed by This Chapter.—Certiorari lies to review an order of the board of trustees of the University of North Carolina affirming the suspension of a student from the University for cheating, since the board of trustees is not an agency in the legislative or judicial branches of the government, nor an agency governed by this chapter, and, therefore, no other statutory provision exists for review of its actions. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

Applied in North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

§ 150-10. Opportunity for licensee or applicant to have hearing.

Chapter Inapplicable Where Renewal Withheld for Failure to Pay Fee.—Provisions of this chapter setting forth uniform precedures to be followed in the revocation of licenses do not apply where renewal of a license is withheld for failure to pay a statutory renewal fee. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

Stated in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 150-11. Notice of contemplated board action; request for hearing; notice of hearing.

Quoted in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 150-12. Method of serving notice of hearing.

Quoted in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 150-20. Manner and time of rendering decision.

The clear intent of this section is that the board loses its authority to render a decision at the expiration of ninety days from the date of the hearing, and an order entered thereafter is a nullity. Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 150-21. Service of written decision.

Order Not Nullified by Delay in Service.—It was not the intent of this section that an order entered within the authority of the board becomes a nullity through a delay in serving it. Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 150-24. Availability of judicial review; notice of appeal; waiver of right to appeal.

Quoted in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

Cited in State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

§ 150-27. Scope of review; power of court in disposing of the case.

Editor's Note.—For case law survey as to judicial review of decisions of administrative agencies, see 45 N.C.L. Rev. 816 (1967).

§ 150-31. Power of board to sue; to seek court action in preventing violations.

Single Act Is Sufficient to Invoke Injunctive Relief.—A single act of unauthorized practice is sufficient, if shown, to invoke the criminal penalties of § 83-12 or the injunctive relief of this section. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

The showing of warnings is not required in order to warrant an injunction. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

Laches May Bar Right to Relief.—Where plaintiff's delay in seeking an injunction in 1964 in respect to what defendant did in 1955 on the church building had been continued so long and under such circumstances as to make it inequitable for a court of equity to issue an injunction against defendant for the violation, plaintiff was guilty of laches, and forfeited any claim it might have had to injunctive relief against defendant for making or assisting in making plans. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

Applied in North Carolina Bd. of Architecture v. Cannon, 264 N.C. 614, 142 S.E.2d 651 (1965).

§ 150-33. Judicial review procedure exclusive.

Quoted in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.3d 719 (1968).

Chapter 151.

Constables.

§§ 151-1 to 151-8: Repealed by Session Laws 1969, c. 1190, s. 57, effective January 1, 1971.

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification.—Cleveland: 1967, c. 431; Iredell: 1965, c. 159; Randolph: 1965, c. 754, s. 1.

Cross References.—For provision that this chapter shall not apply in certain counties, see § 130-202.2.

§ 152-2. Oaths to be taken.

Local Modification.—Randolph: 1965, c. 754, s. 1.

§ 152-3. Coroner's bond.

Local Modification.—Randolph: 1965, c. 754, s. 1.

§ 152-4. Coroners' bonds registered; certified copies evidence.

Local Modification.—Randolph: 1965, c. 754, s. 1.

§ 152-5. Fees of coroners.—Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases:

For holding an inquest over a dead body, five dollars; if necessarily engaged more than one day, for each additional day, five dollars.

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county. (Code, s. 3743; 1903, c. 781; Rev., s. 2775; C. S., s. 3905; 1967, c. 1154, s. 6.)

Local Modification.—Randolph: 1965, c. 754, s. 1; Rowan: 1967, c. 676.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, deleted the last sentence, which related to summoning a physician or surgeon.

§ 152-6. Powers, penalties, and liabilities of special coroner.

Local Modification.—Randolph: 1965, c. 754, s. 1.

§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.

(1) Whenever it appears that the deceased probably came to his death by the criminal act or default of some person, he shall go to the place where the body of such deceased person is and make a careful investigation and inquiry as to when and by what means such deceased person came to his death and the name of the deceased, if to be found out, together with all the material circumstances attending his death, and shall make a complete record of such personal investigation: Provided, however, that the coroner shall not proceed to summon a jury as is hereinafter provided if he shall be satisfied from his personal investigation that the death of the said deceased was from natural causes, or that no person is blamable in any respect in connection with such death, and shall so find and make such finding in writing as a part of his report, giving the reason for such finding; unless an affidavit be filed with the coroner indicating blame in connection with the death of the deceased. A written report of said investigation shall be filed by the coroner with the medical examiner and the solicitor of the superior court.

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in

§ 130-198, the coroner shall notify the solicitor of the superior court and the medical examiner.

(7) If an inquest or preliminary hearing be ordered, to arrange for the examination of any and all witnesses including those who may be offered by the county medical examiner.

(9) To hold his inquiry where the body of the deceased shall be or at any other place in the county, and the body of the deceased need not be present at such hearing. The hearing may be adjourned to other times and places.

(10) To reduce to writing all of the testimony of all witnesses, and to have each witness to sign his testimony in the presence of the coroner, who shall attest the same, and, upon direction of the solicitor of the district, all of the testimony heard by the coroner and his jury shall be taken stenographically, and expense of such taking, when approved by the coroner and the solicitor of the district, shall be paid by the county. When the testimony is taken by a stenographer, the witness shall be caused to sign the same after it has been written out, and the coroner shall attest such signature. The attestation of all the signatures of witnesses who shall testify before the coroner shall include attaching his seal, and such statements, when so signed and attested, shall be received as competent evidence in all courts either for the purpose of contradiction or corroboration of witnesses who make the same, under the same rules as other evidence to contradict or corroborate may be now admitted. The coroner shall file a copy of all written testimony given at the hearing with the county medical examiner and with the solicitor of the superior court. (Code, s. 657; 1899, c. 478; 1905, c. 628, Rev., s. 1051; 1909, c. 707, s. 1; C. S., s. 1020; Ex. Sess. 1924, c. 65; 1955, c. 972, s. 2; 1957, c. 503, ss. 1, 2; 1967, c. 1154, s. 6.)

Local Modification.—Randolph: 1965, c. 754, s. 1.

Cross References.—

As to duties of coroner with respect to postmortem medicolegal examinations, see § 130-202.2.

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, substituted "medical examiner and the solicitor of the superior court" for "clerk of the superior court who shall preserve the said report" at the end of subdivision (1), rewrote subdivision (6), deleted "thereat" following "examination" in subdivision (7), deleted "chairman of the committee on postmortem medicolegal examinations or the" near the end of subdivision (7), rewrote subdivision (9), and rewrote the last sentence of subdivision (10).

As the rest of the section was not changed by the amendment, only subdivisions (1), (6), (7), (9) and (10) are set out.

Coroner Has No Authority to Order Autopsy.—See opinion of Attorney General to Mr. Edgar E. Smith, 41 N.C.A.G. 212 (1971).

Cited in State v. Colson, 274 N.C. 295, 163 S.E.2d 376 (1968); State v. Colson, 1 N.C. App. 339, 161 S.E.2d 637 (1968).

§ 152-8. Acts as sheriff in certain cases; special coroner.

Local Modification.—Randolph: 1965, c. 754, s. 1.

§ 152-9. Compensation of jurors at inquest.

Local Modification.—Randolph: 1965, c. 754, s. 1.

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus.

Local Modification.—Randolph: 1965, c. 754, s. 1.

§ 152-11. Service of process issued by coroner.

Local Modification.—Randolph: 1965, c. 754, s. 1.

Chapter 152A.

County Medical Examiner.

§§ 152A-1 to 152A-12: Repealed by Session Laws 1967, c. 1154, s. 8, effective July 1, 1969.

Cross References.—For provision that § 152A-9 shall remain in full force and effect in certain counties, see § 130-202.2. For other provisions as to medical examiners, see §§ 130-192 to 130-202.2.

Editor's Note.—The repealed sections derived from Session Laws 1965, c. 639, and § 152A-12 was amended by Session Laws 1965, c. 1113, and Session Laws 1967, cc. 192, 379, 459, 485.

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Counties and County Commissioners.

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ARTICLE 1.

Corporate Existence and Powers of Counties.

§ 153-2. Corporate powers of counties.

Cited in Moody v. Transylvania County, 271 N.C. 384, 156 S.E.2d 716 (1967).

ARTICLE 2.

County Commissioners.

§ 153-4. Election and number of commissioners.

Local Modification.—Currituck: 1969, c. 141; McDowell: 1965, c. 291.

By virtue of Session Laws 1963, c. 215. Person should be stricken from the replacement volume.

§ 153-5. Local modifications as to term and number.—The number of commissioners shall be five instead of three in the counties of Alamance, Ashe, Beaufort, Bertie, Buncombe, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenburg, Nash, New Hanover, Perquimans, Pitt, Richmond, Rockingham, Rowan, Sampson, Stokes, Tyrrell, Vance, Warren, Wayne and Wilson.

At the election for county officers to be held in Ashe County in 1968, and quadrennially thereafter, there shall be elected two county commissioners who shall serve for terms of four years each and until their successors are elected and qualified. At the election to be held in Ashe County in 1970, and quadrennially thereafter, there shall be elected three county commissioners who shall serve for a term of four years each and until their successors are elected and qualified. Until two members shall have been duly elected at the general election of 1968 and shall qualify and take office along with other county officers of Ashe County, as otherwise provided by law, the membership of the Ashe County board of commissioners shall consist of three members.

The board of county commissioners in Bladen County shall consist of five members, to be nominated and elected by the voters of the entire county, and the present members of the board of county commissioners shall continue to hold office until their successors are elected and qualified as herein provided.

Only one member of the board of commissioners of Brunswick County shall be from any one township of said county.

There shall be elected in Chowan County at the general election to be held in 1966 five members of the board of county commissioners. The two candidates receiving highest votes in the 1966 election shall be elected for a term of four years, and the three receiving next highest vote shall be elected for two years. In the 1968 election and each two years thereafter, there shall be elected three commissioners, the two candidates receiving the highest vote to be for a term of four years and the one receiving the next highest vote for a term of two years.

In Gaston County six persons shall be elected, one of whom must be a resident of Gastonia township, one a resident of River Bend township, one a resident of South Point township, one a resident of Crowders Mountain township, one a resident of Cherryville township, and one a resident of Dallas township. If at any time the board of commissioners of Gaston County are equally divided upon any question pending before them and there is a tie vote, then the clerk of said board is authorized and empowered to cast the deciding vote and to determine such question.

At the election for county officers to be held in Greene County in 1964, there shall be elected five county commissioners. The two candidates receiving the highest number of votes shall serve for a term of four years each. The three candidates receiving the next highest number of votes shall serve for a term of two years each.

At the election for county officers to be held in Greene County in 1966, and quadrennially thereafter, there shall be elected three county commissioners who shall serve for terms of four years each and until their successors are elected and qualified. At the election to be held in Greene County in 1968, and quadrennially thereafter, there shall be elected two county commissioners who shall serve for terms of four years each and until their successors are elected and qualified.

At the election for county officers to be held in Onslow County in 1970, there shall be elected five county commissioners. The three candidates receiving the highest number of votes shall serve for a term of four years each. The two candidates receiving the next highest number of votes shall serve for a term of two years each. Thereafter, members shall be elected for a term of four years and elections shall be held biennially for the number of commissioners whose terms expire.

Pasquotank County is hereby divided into two districts. District No. 1 shall consist of all the territory within the corporate limits of Elizabeth City, and District No. 2 shall consist of all the territory in Pasquotank County outside the corporate limits of Elizabeth City. In the primary or primaries hereafter held preceding the regular biennial election of county officials in Pasquotank County, there shall be nominated by each of the political parties participating therein two candidates for the offices of county commissioners from District No. 1 and two candidates for the offices of county commissioners from District No. 2, and one candidate from the county at large without regard to districts. At the regular biennial election of county officials in Pasquotank County in 1966, there shall be elected a total of five commissioners, two from District No. 1, two from District No. 2, and one from the county at large. Voting in the primary and regular elections as to all commissioners shall be by the voters at large without regard to districts. Each candidate for office shall specify which district he is a candidate to represent or whether he is a candidate at large. The ballots shall also indicate such information. In the 1966 election, the commissioner elected from District No. 1 who receives the highest number of votes shall be elected for a term of four years and the other commissioner therefrom shall be elected for a term of two years. In the 1966 election, the commissioner elected from District No. 2 who receives the highest number of votes shall be elected for a term of four years and the other commissioner therefrom shall be elected for a term of two years. The commissioner elected at large shall serve for a term of two years. At the expiration of their respective terms of office and quadrennially thereafter, their successors shall be elected for terms of four years and until their successors are elected and qualified.

In the primary and general elections in 1964, and biennially thereafter, there shall be nominated and elected five members to the board of county commissioners of Person County. The voters as a whole shall nominate and elect the above board members.

The board of county commissioners in Rowan County shall consist of five members, to be nominated and elected by the voters of the entire county, and the present members of the board of commissioners shall continue to hold office until their successors are elected and qualified as herein provided.

There shall be elected in Rowan County at the general election to be held in 1968 five members of the board of county commissioners. The two candidates receiving highest votes in the 1968 election shall be elected for a term of four years, and the three receiving next highest vote shall be elected for two years. In the 1970 general election there shall be elected three commissioners for a term of four years and each two years thereafter there shall be elected at the regular general election the number to replace those whose terms expire.

The members elected in 1968, and thereafter, shall take office on the first Monday of December in the year said members are elected.

In the event two or more candidates receive the same number of votes in the election, the county board of elections shall determine which candidates are elected for a term of four years and which candidates are elected for two-year terms.

Commencing with the election in 1960 and every four years thereafter, the county commissioners of Sampson County shall be elected for terms of four years each.

In Wake County five persons shall be elected, three of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, 1910, and two of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, 1912.

At the general election for county officers to be held in Wayne County in 1966, there shall be elected five county commissioners. The three candidates receiving the highest number of votes shall serve for a term of four years each, and the two candidates receiving the next highest number of votes shall serve for a term of two years each. At the general election for county officers in 1968, and biennially thereafter, there shall be elected candidates equal to the number of commissioners whose terms next expire, who shall serve for a term of four years and until their successors are elected and qualified.

There shall be elected in Wilkes County at the general election to be held in 1964 five members of the board of county commissioners. The two candidates receiving highest votes in the 1964 election shall be elected for a term of four years, and the three receiving next highest vote shall be elected for two years. In the 1966 election and each two years thereafter, there shall be elected three commissioners, the two candidates receiving the highest vote to be for a term of four years and the one receiving the next highest vote for a term of two years, and each two years thereafter, there shall be elected three commissioners, the two receiving highest vote for a term of four years and the one receiving the lowest vote for a term of two years.

At the general election for county officers to be held in Warren County in 1972, there shall be elected five county commissioners. The two candidates receiving the highest number of votes for commissioner shall be elected for a term of four years, and the three candidates receiving the next highest number of votes shall be elected for a term of two years.

At the general election for county officers to be held in 1974, and every two years thereafter, there shall be elected candidates equal to the number of commissioners whose terms expire, and they shall serve for a term of four years. (1876-7, c. 141, s. 5; Code, s. 716; 1887, c. 307; 1895, c. 135; 1899, cc. 103, 147, 153, 187, 297, 301, 346, 450, 467, 488, 609; 1901, cc. 14, 60, 328, 330, 581; 1903, cc. 4, 7, 14, 36, 46, 59, 137, 191, 203, 206, 207, 228, 265, 446, 515, 790; 1905, cc. 37, 44, 58, 73, 148, 338, 340, 346, 397, 422, 553; Rev., ss. 1311, 1312; 1907, cc. 2, 16, 55, 61, 125, 178, 291, 350; 1909, cc. 12, 53, 213, 302, 625, 729; 1917, cc. 32, 175, 381; C. S., s. 1293; 1931, c. 68; 1941, c. 34; 1943, cc. 18, 43, 103, 109, 217, 345; c. 368, s. 2; 1953, c. 310; 1955, c. 16; 1959, c. 695; 1961, c. 101; 1963, cc. 215, 217, 351; 1965, cc. 459, 476; c. 664, s. 1; c. 964, s. 1; 1967, cc. 158, 325, 982; 1969, cc. 151, 167; 1971, c. 1063, s. 1.)

Editor's Note.—

The first 1965 amendment added the paragraph relating to Chowan County, the second 1965 amendment added the paragraph relating to Wayne County and the third 1965 amendment added the paragraph relating to Pasquotank County. Section 2 of the third 1965 act provides 'that the amendment shall first be applicable with respect to the biennial election of county officials in 1966.

The fourth 1965 amendment added Stokes to the list of counties in the first paragraph. Section 2 of the fourth 1965 act provides: "The provisions of s. 1 of this act shall apply to the primary nomination and general election of members of the board of county commissioners of Stokes County in 1966 and thereafter, and until the total authorized membership of the board of county commissioners consisting of five members shall have been duly elected at the general election of 1966, and shall qualify and take office along with other county officers of Stokes County as otherwise provided by law, the membership of the county board of commissioners of Stokes County shall consist of three members as at present."

The first 1967 amendment inserted the paragraph relating to Bladen County.

The second 1967 amendment added Ashe to the list of counties in the first paragraph and added the paragraph relating to Ashe County.

The third 1967 amendment added the paragraphs relating to Rowan County.

Both 1969 amendments added identical paragraphs relating to Onslow County.

The 1971 amendment added the last two paragraphs.

The 1971 amendment is made subject to a referendum to be held at "the first nonpartisan election of any kind to be held in Warren County prior to the general election in 1972, but in the event no such election is held, then at the general election for county officers to be held in 1972."

See Session Laws 1971, c. 1063, s. 2.

In the fifth paragraph under this catchline in the replacement volume, the word "fourth" should be "sixth."

For note on one man, one vote as applied to local governing bodies, see 47 N.C.L. Rev. 413 (1969).

§ 153-5.1. Reapportionment of board — finding of denial of equal representation.—The board of commissioners of any county in which by law

(1) Any member of the board is nominated or elected by the voters of an area less than the whole county, or

(2) Residence in any area less than the whole county is a condition of eligibility for candidacy for a seat on the board

is hereby authorized to find as a fact whether any citizens of the county are denied equal representation on the board because of the degree of differences in population of such election or residence areas. (1966, Ex. Sess., c. 2, s. 1.)

§ 153-5.2. Reapportionment of board—action which board may take by resolution.—Upon a finding of denial of equal representation as provided above, the board of county commissioners may by resolution:

(1) Redefine the election or residence areas within the county and, if necessary, reapportion commissioners among the areas so defined, or in the alternative, reapportion one or more commissioners to the county at large and the remainder among the areas so defined, or

(2) Provide that all persons otherwise qualified shall be eligible for candidacy for a seat on the board without restriction as to place of residence within the county, and that all such candidates shall be nominated and elected by the voters of the county as a whole. (1966, Ex. Sess., c. 2, s. 2; 1969, c. 994.)

Editor's Note. — The 1969 amendment added to subdivision (1) the language beginning "or in the alternative."

§ 153-5.3. Reapportionment of board—requirements for redefined election or residence areas.—Redefined election or residence areas shall be so composed that the ratios obtained by dividing the population of each area by the number of commissioners apportioned to that area are as nearly equal as practicable, taking into account contiguity and compactness of territory of the respective areas. Area boundaries should follow township lines and the corporate limits of municipalities wherever practicable. (1966, Ex. Sess., c. 2, s. 3.)

§ 153-5.4. Reapportionment of board—unexpired terms.—The unexpired term of office of any commissioner duly elected or appointed prior to the effective date of a resolution adopted pursuant to §§ 153-5.1 to 153-5.8 shall not be affected by any change in the boundaries of the area in which he resides. If the terms of office of all members of the board do not expire at the same time, the board of commissioners shall set forth in the resolution the expiring terms to be filled. (1966, Ex. Sess., c. 2, s. 4.)

§ 153-5.5. Reapportionment of board—effective date of resolution.—The effective date of a resolution adopted pursuant to §§ 153-5.1 to 153-5.8

shall be the date of its adoption; provided, however, that in order to assure an orderly election procedure, any such resolution adopted within the period of time beginning 60 days before a primary election, and ending 60 days after a general election, for the office of county commissioner, shall become effective upon the day next following the end of such period. (1966, Ex. Sess., c. 2, s. 5.)

§ 153-5.6. Reapportionment of board—filing copies of resolution.—Certified copies of any such resolution, as the same shall appear in the minutes of the board, shall, not later than 10 days following the effective date thereof, be filed in the office of the Secretary of State, the office of register of deeds of the county, and with the chairman of the county board of elections. (1966, Ex. Sess., c. 2, s. 6.)

§ 153-5.7. Reapportionment of board—effect on other laws.—Sections 153-5.1 to 153-5.6 shall not repeal the provisions of any law relating to the composition, nomination or election of county commissioners, except as such provisions are superseded by a resolution adopted, recorded and filed pursuant to §§ 153-5.1 to 153-5.6. (1966, Ex. Sess., c. 2, s. 8.)

§ 153-5.8. Reapportionment of board—not applicable to Cherokee County.—The provisions of §§ 153-5.1 to 153-5.7 shall not apply to Cherokee County. (1966, Ex. Sess., c. 2, s. 9½.)

§ 153-6. Vacancies.—Vacancies occurring in the board of commissioners of any county shall be filled by appointment by the remaining members of the board. The person appointed to fill a vacancy shall be a member of the same political party, and, if the county is divided into districts for election of the board, a resident of the same district, as the member causing the vacancy. The board shall consult the county executive committee of the appropriate political party before filling a vacancy, but shall not be bound by its recommendations.

If the remaining members of the board, because of a tie vote or for any other reason, are unable to fill the vacancy within 60 days of its occurrence, such vacancy shall be reported immediately by the clerk of the board to the clerk of the superior court of such county, who shall within 10 days thereafter, fill such vacancy. The clerk of superior court shall consult the county executive committee of the appropriate political party before filling the vacancy, but he shall not be bound by the committee's recommendations. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C. S., s. 1294; 1959, c. 1325; 1965, cc. 239, 382; 1967, cc. 7, 424, 439, 1022; 1969, cc. 82, 222; 1971, c. 743, s. 1.)

Editor's Note.—

Session Laws 1969, c. 222, rewrote this section as previously amended by Session Laws 1969, c. 82; 1967, cc. 7, 424, 439, 1022; 1965, cc. 239, 382.

The 1971 amendment added the second paragraph.

Session Laws 1971, c. 743, s. 2, provides that the amendment "shall be applicable to any vacancies existing upon the date of its ratification." The act was ratified July 5, 1971.

§ 153-8. Meetings of board of commissioners.—(a) The board of commissioners of each county shall hold a regular meeting at the courthouse on the first Monday of each month or on the following Tuesday if Monday is a legal holiday. In lieu of meeting on the first Monday at the courthouse, boards of county commissioners may, by resolution duly adopted, designate any other day and any other public place within the county as the time and site of its regular meeting. At least 10 days before the first meeting to which it is to apply, any resolution adopted hereunder shall be posted on the courthouse bulletin board, and a summary thereof shall be published at least once in a newspaper published in the county and qualified to publish legal advertisements, or if no such newspaper is available, in a newspaper having a general circulation in the county. Special meetings called as provided below may be held at the site designated for regular meetings.

(b) The board may adjourn its regular meetings from day to day or to a day certain until the business before it is completed. Special meetings may be held on the call of the chairman of the board or of a majority of the members upon two days' written notice being given to each of the members and posting such notice on the courthouse bulletin board. Written notice shall be deemed waived by attendance at and participation in a special meeting.

(c) At the first regular meeting in December of each year, the board shall choose one of its members as chairman for the ensuing year, unless the chairman is elected as such by the people, and may choose a vice-chairman to act in the disability or absence of the chairman. In the absence of the chairman and vice-chairman, the members present may choose a temporary chairman. Unless otherwise specifically provided by law or rule of the board, the chairman shall have the right to vote on all questions before the board, but shall have no right to break a tie vote in which he participated.

(d) A majority of the board shall constitute a quorum. Every member who is present when a matter is voted upon shall vote thereon, unless he is excused by the board, except on those matters involving his own official conduct or involving his own financial interest, except on a vote to adjust the rate of compensation of the several members of the board of commissioners. The board shall have authority to adopt rules governing its proceedings in keeping with the size and nature of the board and in the spirit of generally accepted principles of parliamentary procedure, and a motion to suspend a rule previously adopted shall require unanimous consent of those present and voting. (Code, s. 706; Rev., s. 1317; C. S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036.)

Local Modification.—Alamance: 1965, c. 290; Avery: 1967, c. 539; Guilford: 1965, c. 445; Hoke: 1967, c. 60; Mecklenburg: 1967, c. 180.

Editor's Note.—

The 1967 amendment added a former second paragraph. Section 2 of the amendatory act repealed all laws and clauses of laws in conflict, except public-local and private acts.

The first 1969 amendment rewrote this section. Section 2 of the amendatory act provides: "This act shall be deemed supplementary to all local, special, or private laws heretofore enacted and shall not be deemed to repeal any such local, special, or private laws relating to the meetings and procedures of boards of county commissioners."

The second 1969 amendment rewrote the third sentence of subsection (a) of this section as rewritten by the first 1969 amendment.

Opinions of Attorney General. — Mr. Jack Simonds, Member, Cherokee County Board of Commissioners, 10/23/69.

§ **153-9. Powers of board.**—The boards of commissioners of the several counties have power:

Cross References.—

As to establishment of recreation system, see § 160-155 et seq. As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see § 160-61.2. As to rural recreation districts, see §§ 160-166.3 through 160-166.17. As to power of county to exercise its police powers to repair, close or demolish unfit dwellings, see § 160-182. As to county and regional redevelopment commissions, and application of the urban redevelopment law to counties, see §§ 160-457.2, 160-457.3.

Editor's Note.—For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

Power of General Assembly to Delegate Authority to Boards.—Subject to Constitutional limitations, the power of the General Assembly to delegate to county commissioners the authority to adopt ordinances in the lawful exercise of the police power is well established. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Courts Are Not Concerned with Motives, Wisdom or Expediency of Board's Acts.—If the board of commissioners does not exceed its delegated or constitutional authority, the courts are not concerned with the motives, wisdom, or expendiency which prompts its actions. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Quoted in State v. Whitt, 2 N.C. App. 601, 163 S.E.2d 531 (1968).

Cited in Jones v. Nash County Gen. Hosp., 1 N.C. App. 33, 159 S.E.2d 252 (1968).

Taxation and Finance.

(7) Repealed by Session Laws 1971, c. 806, s. 3, effective July 1, 1971.

County Buildings.

(8) To Build and Maintain a Courthouse and Other County Buildings.—To erect and maintain a courthouse and other necessary county buildings in every county, to repair and maintain such courthouse and county buildings, to levy and collect taxes to pay such costs, and to make rules and regulations for the preservation of the courthouse and other county buildings. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318, C. S., s. 1297; 1967, c. 581, s. 1.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this subdivision.

Cited in Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

(8a) To Levy Special Tax for Construction, etc., of Courthouses and Jails.—The board of county commissioners of any county is hereby authorized in its discretion, to levy annually on all taxable property in the county a special tax for the special purpose of acquiring, constructing, renovating, equipping and furnishing courthouses and jails together with the land to be designated as a site or sites therefor, and the General Assembly does hereby give special approval for the levy of such tax, and the authority granted in this subdivision is in addition to and not in substitution for existing powers of boards of county commissioners, whether such existing powers be granted by general or special act. (1967, c. 879.)

Editor's Note. — The 1967 amendment added this subdivision.

Cited in Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

(9) To Designate Site for County Buildings.—

Local Modification.—Rockingham: 1965, c. 644

Requirement of Unanimous Vote and Published Notice Inapplicable to Move of Quarters of County Social Services Department from One County Building to Another.—See opinion of Attorney General to Mr. Edgar P. Israel, Director, Haywood County Department of Social Services, 9/2/70.

Applied in Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

County Officers

(11) To Approve Bonds of County Officers and Induct into Office. — To qualify and induct into office at the meeting of the board on the first Monday in the month next succeeding their election or appointment, the following named county officers, to wit: Clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor and constable, and to take and approve the official bonds of such officers, which the board shall cause to be registered in the office of the register of deeds. The original bonds shall be deposited with the clerk of the superior court, except the bond of the said clerk, which shall be deposited with the register of deeds, for safekeeping. The provisions of this section relating to the place of deposit of the bonds of county officials shall govern in Forsyth County, notwithstanding contrary provisions in other chapters and sections of the General Statutes of North Carolina.

If the board declares the official bonds of any of said county officers to be insufficient, or declines to receive the same, the officer may appeal to the superior court judge riding the district in which the county is, or to the resident judge of said district, as he may elect, who shall hear said appeal in chambers, at any place in said district he designates, within ten days after notice by him of the same, and if, upon the hearing of the appeal, the judge is of the opinion that the bond is sufficient, he shall issue an order to the board of commissioners to induct the officer into office, or that he shall be retained in office, as the case may be. If, upon the hearing of the appeal, the judge is of the opinion that the bond is insufficient, he shall give the appellant 10 days in which to file before him an additional bond, and if the appellant within the 10 days files before the judge a good and sufficient bond, in the opinion of the judge, he shall so declare and issue his order to said board directing and requiring them to induct the appellant into office, or retain him, as the case may be. If, in the opinion of the judge, both the original and the additional bonds are insufficient, he shall declare the said office vacant and notify the commissioners, who shall appoint to fill the vacancy and notify the clerk of the superior court. In case of a vacancy in the office of the clerk of the superior court said vacancy shall be filled by the resident judge. The judgment of the superior court judge shall be final. The appeal and the finding and judgment of the superior court judge shall be recorded on the minutes of the board of commissioners. (1868, c. 20, s. 8; 1874-5, c. 237, s. 3; Code, s. 707; 1895, c. 135, s. 3; Rev., s. 1318; C. S., s. 1297; 1965, c. 26.)

Local Modification.—Guilford: 1971, c. 186.

Editor's Note. — The 1965 amendment added the last sentence in the first paragraph.

(12a) Repealed by Session Laws 1969, c. 358, s. 2, effective July 1, 1969.

Editor's Note.—The repealed subdivision had been amended by Session Laws 1965, cc 180, 881; Session Laws 1967, c. 167, s. 1; c. 668; c. 829, s. 2; Session Laws 1969, c. 80, s. 4. For present provisions as to authority of boards of county commissioners to fix fees and commissions of county officers and employees, see §§ 153-48.1 to 153-48.3.

County Property

(14) To Sell or Lease Real Property.—

Local Modification. — Onslow: 1965, c. 98.

Highways and Bridges

(17) Roads and Bridges.—To supervise the maintenance of neighborhood public roads or roads not under the supervision and control of the State Highway Commission and bridges thereon: Provided, however, county funds may not be expended for such maintenance except to the extent such expenditures are otherwise authorized by law; to exercise such authority with regard to ferries and toll bridges on public roads not under the supervision of the State Highway Commission as is granted in G.S. 136-88 of the Chapter on Roads and Highways or by other statutes; to provide draws on all bridges not on roads under supervision of the State Highway Commission where the same may be necessary for the convenient passage of vessels; to allow and contract for the building of toll bridges on all roads not under the supervision of the State Highway Commission and to take bond from the builders thereof. It is the intent of this subdivision that the powers and authorities herein granted shall be exercised in accordance with the provisions of the Chapter on Roads and Highways.

The boards of commissioners of the several counties likewise have power to close any street or road or portion thereof (except those lying within the limits of municipalities) that is now or may hereafter be opened or dedicated, either by recording of a subdivision plat or otherwise. Any individuals owning property adjoining said street or road who do not join in the request for the closing of said street or road shall be notified by registered letter of the time and place of the meeting of the commissioners at which the closing of said street or road is to be acted upon. Notice of said meeting shall likewise be published once a week for four weeks in some newspaper published in the county, or if no newspaper is so published, by posting a notice for 30 days at the courthouse door and three other public places in the county. No further notice shall be necessary. If it appears to the satisfaction of the commissioners that the closing of said road is not contrary to the public interest and that no individual owning property in the vicinity of said street or road or in the subdivision in which is located said street or road will thereby be deprived of reasonable means of ingress and egress to his property, the board of commissioners may order the closing of said street or road; provided, that any person aggrieved may appeal within 30 days from the order of the commissioners to the superior court of the county, where the same shall be heard de novo. Upon such an appeal, the superior court shall have full jurisdiction to try said matter upon the issues arising and to order said street or road closed upon proper findings of fact by the jury. A certified copy of said order of the commissioners (or of the judgment of the superior court in the event of an appeal) shall be filed in the office of the register of deeds of said county. Upon the closing of a street or road in accordance with the provisions hereof, all right, title and interest in such portion of such street or road shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to such portion of such street or road, and the title of each of such persons, firms or corporations shall, for the width of the abutting land owned by such persons, firms or corporations, extend to the center of such street or road. Provided, that the provisions of this paragraph shall not apply to any roads and highways under the control and supervision of the State Highway Commission.

The board of county commissioners of the several counties shall also have the power and authority to close and remove from dedication all easements except these [those] lying within the limits of municipalities, that are now or may hereafter be dedicated, whether by recording of a subdivision plat or otherwise. The closing and removal of said easements shall be in the same manner as herein provided for the closing of streets and roads provided that the provisions of this paragraph shall not apply to any easements for roads and highways that are a part of the State Highway System.

The board of aldermen or other governing body of any municipality shall have the same power and authority with respect to roads, streets or other public ways which are inside the corporate limits of such municipality as given to the county commissioners by the second paragraph of this subdivision with respect to roads, streets or public ways outside the corporate limits of a municipality. Provided, that the provisions of this paragraph shall not apply to any streets or highways under the control and supervision of the State Highway Commission.

Copies of the registered letters giving the notice required by the second paragraph of this subdivision, and the return receipts or other good and sufficient evidence of giving the required notice, shall be recorded in the register of deeds office, together with the resolution of such county or municipal governing body (or with the judgment of the superior court, in cases where an appeal was taken). It shall not be necessary for the clerk of court to probate the records required to be recorded herein. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595.)

Local Modification.—Cities of Durham and Sanford: 1965, c. 614; 1969, c. 19.

Editor's Note.—

The first 1965 amendment deleted a proviso formerly appearing at the end of the fourth sentence in the second paragraph of this subdivision and added the provisos at the end of the second and present fourth paragraphs.

The second 1965 amendment added the last sentence in the last paragraph.

The 1971 amendment added the present third paragraph of this subdivision.

For a note discussing the disposition of property within the boundaries of a dedicated street when use of the street is discontinued, see 45 N.C.L. Rev. 564 (1967).

This subdivision provides a procedure for the closing of roads abandoned by the Highway Commission and the vesting of title in and to the roadbed. Owens v. Taylor, 2 N.C. App. 178, 162 S.E.3d 576 (1968).

The closing of a street must not deprive a property owner of reasonable ingress or egress. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

An individual may restrain the wrongful obstruction of a public way, of whatever origin, if he will suffer injury thereby as distinct from the inconvenience to the public generally, and he may recover such special damages as he has sustained by reason of the obstruction. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965)

Cited in Carolina Power & Light Co. v. Creasman, 262 N.C. 390, 137 S.E.2d 497 (1964).

Inspection and Licenses

(20a) To Prohibit or Regulate Itinerant Merchants, Peddlers, Hawkers and Solicitors.—In that portion of the county lying outside the jurisdiction of an incorporated city or town, to prohibit or to regulate itinerant merchants, peddlers, hawkers and solicitors. Such regulations may include, but shall not be limited to, requirements that an application be submitted, that a permit be issued, that an investigation be made, that such activities be reasonably limited as to time and area, that proper credentials and proof of financial stability be submitted, and that an adequate bond be posted to protect the public from fraud; provided, that the board of county commissioners may make such regulations applicable within the jurisdiction of any incorporated city or town whose governing body, by resolution, consents to such regulations and until such time as such consent may, by resolution, be withdrawn.

This subdivision shall apply to all counties as required by Article II, § 29, of the Constitution of North Carolina.

If any person, firm or corporation shall violate any regulation or ordinance adopted pursuant to this subdivision, such person, firm or corporation shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. (1967, c. 80, ss. 1-2½.)

Editor's Note.—The 1967 amendment added this subdivision.

Section 3 of the amendatory act provides: "All laws and clauses of laws in conflict with this act are hereby repealed, provided no local act relating to the practice of palmistry, fortune-telling or clairvoyance shall be repealed by this act."

The reference to the Constitution in this subdivision is to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. II, § 24.

Miscellaneous

(35½) To Promote Soil and Water Conservation Work.—To cooperate with the National Soil Conservation Service and the State Soil and Water Conservation agencies and districts to promote soil and water conservation work, and to appropriate tax or nontax revenues for such purposes. The special approval of the General Assembly is hereby given for the levy of special taxes for such purposes. (1959, c. 1213; 1961, cc. 266, 290, 301, 579, 581, 582, 584, 656, 693, 705, 809, 1126; 1963, cc. 290, 701; 1965, cc. 531, 702; 1967, c. 319; 1969, c. 64, s. 1; c. 174, s. 1; c. 1003, s. 1.)

Editor's Note.—

Session Laws 1969, c. 1003, effective July 1, 1969, repealed former subdivisions (35½) and (35¾), both of which were applicable only to certain named counties, and enacted the above subdivision in lieu thereof. Subdivision (35½) had been previously amended by Session Laws 1969, c. 64, s. 1; c. 174, s. 1. Subdivision (35¾) had been previously amended by Session Laws 1969, c. 64, s. 2; c. 174, s. 2.

(34¾) Repealed by Session Laws 1969, c. 1003, s. 1, effective July 1, 1969.

Cross Reference.—See subdivision (35½) and the note thereto.

(37) To make Appropriations for Libraries.—

Local Modification. — Ashe: 1969, c. 1049; Lincoln: 1969, c. 1096; Watauga and Wilkes: 1969, c. 1049.

(38) Homes for Indigent and Delinquent Children.—To provide for the establishment and maintenance, with the approval of the State Board of Public Welfare, of such home or homes for indigent and delinquent children in said county, as to them may seem proper or necessary, or to cooperate with the board of county commissioners or other governing authority in any other county or counties in the establishment and maintenance, at some mutually agreeable point, of a district home for such purposes, said district to be established by agreement and said home to be established and maintained upon such terms as may be agreed upon by the boards of county commissioners of the several counties concerned. (1927, c. 248; 1965, c. 357.)

Editor's Note.—

Prior to the 1965 amendment the State Board of Public Welfare had been referred to in the subdivision as "State Board of Charities and Public Welfare."

(39a) County Fire Marshal.—The board of commissioners of any county may appoint a county fire marshal, to serve at the will of the board, to receive such compensation as the board may determine, to have such assistants and employees as the board may provide, and to perform such duties as the board may require. The duties of the county fire marshal may include, but shall not be limited to

a. The coordination of all fire fighting activities in the county which are within the jurisdiction of the board of commissioners,

b. The coordination of all fire prevention activities in the county which are within the jurisdiction of the board of commissioners, and

c. The making of inspections and reports of the public schools required by Article 17, Chapter 115, of the General Statutes: Provided, that the county fire marshal shall not make the electrical inspections required by said Article unless he is qualified to do so under the provisions of subdivision (47a) hereof.

In lieu of appointing a county fire marshal, the board may impose any duties, which could be imposed upon a county fire marshal if one were appointed, on any other officer or employee of the county. The board of commissioners may make necessary appropriations to cover expenses incurred pursuant to the provisions of this subdivision. (1959, c. 290; 1969, c. 1064, s. 2.)

Editor's Note.—

The 1969 amendment substituted "subdivision (47a) hereof" for "G.S. 160-122" at the end of paragraph c.

(39b) County Fire Prevention Code; Inspectors. — The board of commissioners of any county is hereby authorized, in its discretion, to adopt, amend, and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion in the county, subject to the approval of the State Building Code Council. Such regulations shall constitute a county fire prevention code and shall have the force and effect of law in all unincorporated areas of the county.

The board of commissioners of each county having a fire prevention code shall appoint one or more fire prevention inspectors to enforce the provisions of the county fire prevention code. The fire prevention inspectors shall serve at the will of the board, receive such compensation as the board may determine, and perform such duties as are required by the board and approved by the State Building Code Council. No inspector shall be appointed, unless and until approved by the Commissioner of Insurance, as qualified to make fire prevention inspections, and the Commissioner of Insurance is hereby authorized to determine qualifications necessary for approval which may include the taking and passing of a written examination. Nothing contained herein shall prevent the board of commissioners from providing that the county fire marshal, building inspector, electrical inspector or other official or employee shall perform the duties of fire prevention inspector, if approved as provided above, but no person shall make any electrical inspections unless he shall be qualified as required by subdivision (47a) hereof.

Nothing in this subdivision shall be construed as prohibiting two or more counties from designating the same person or persons to make the inspections and perform the duties required by this subdivision. (1965, c. 626; 1969, c. 1064, s. 3.)

Editor's Note. — The 1965 amendment added this subdivision.

The 1969 amendment substituted "in all unincorporated areas of the county" for "outside the corporate limits of any incorporated city or town in the county" at the end of the first paragraph and "subdivision (47a) hereof" for "G.S. 160-122" at the end of the second paragraph.

(40) County Planning Board.—

Local Modification. — By virtue of Session Laws 1965, c. 1106, Chatham should be stricken from the replacement volume.

By virtue of Session Laws, 1967, c. 54, Stanly should be stricken from the replacement volume.

By virtue of Session Laws 1965, c. 457, Vance should be stricken from the replacement volume.

Editor's Note.—

Session Laws 1959, c. 659, referred to under this subdivision in the replacement volume, was repealed by Session Laws 1965, c. 526, s. 4.

Member of County Planning Board Serves at Will of Commissioners. — See opinion of Attorney General to Mr. William C. Reeves, Madison County Attorney, 41 N.C.A.G. 230 (1971).

(42) Repealed by Session Laws 1971, c. 780, s. 6, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

(43) Tax Levies for Certain Special Purposes in Certain Counties.—The board of county commissioners of any county is hereby authorized, in its discretion, to levy annually on all taxable property in the county any one or more of the following special taxes for the special purposes indicated, and the General Assembly does hereby give special approval for the levy of such taxes, and the authority granted in this subdivision is in addition to and not in substitution for existing powers of boards of commissioners, whether such existing powers be granted by general or special act:

a. For the special purpose of paying the salary and office expenses of the county accountant made necessary for the performance of his duties as prescribed in the County Fiscal Control Act, being Article 10 of Chapter 153 of the General Statutes of North Carolina:

b. For the special purpose of paying the salaries and expenses of the farm demonstration agent and the home demonstration agent and other expenses incurred in farm and home demonstration;

c. For the special purpose of paying the salary and expenses of the veteran's service officer and other expenses incurred in maintaining a veteran's service office. (1953, c. 895; 1955, cc. 201, 234, 363, 473, 717, 918, 931, 944; 1957, cc. 388, 389, 868, 896, 1033; 1959, cc. 388, 394, 625, 724, 860, 1317; 1961, cc. 193, 631, 1045, 1082, 1083; 1963, c. 314; 1965, cc. 518, 1053; 1967, cc. 103, 202; c. 480, s. 2; c. 594; c. 1003, s. 2; c. 1024.)

Editor's Note.—

The first 1965 amendment inserted "Vance," and the second 1965 amendment inserted "Bladen" in the list of counties in the former last paragraph.

The first 1967 amendment inserted "Bertie," the second 1967 amendment inserted "Duplin," the third 1967 amendment inserted "Onslow," the fourth 1967 amendment inserted "Davie," and the fifth 1967 amendment inserted "Guilford" in the list of counties in the former last paragraph.

Session Laws 1969, c. 1003, effective July 1, 1969, deleted the former last paragraph, which restricted the application of this subdivision to certain named counties and which had been amended by Session Laws 1969, cc. 103, 202; c. 480, s. 2; cc. 594, 1024.

(44) Obtaining Liability Insurance and Waiver of Immunity from Liability for Damages.—

Local Modification. — By virtue of Session Laws 1965, c. 220, Scotland should be stricken from the replacement volume.

Protection against prejudice is afforded by this subdivision in providing that no part of the pleadings relating to liability insurance shall be read or mentioned in the presence of the trial jury. Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968).

Governmental Immunity. — Where a county is covered by a policy of liability insurance, the question of governmental immunity from suit from injuries caused by alleged negligence does not arise with reference to the validity of a judgment of nonsuit. Cook v. County of Burke, 272 N.C. 94, 157 S.E.2d 611 (1967).

Immunity Is Not Waived as to Employees and Premises Not Included in Policy.—A policy of insurance affording protection to a county against liability caused by negligence of named personnel and employees of the county and covering listed and described premises does not waive the county's governmental immunity for negligence in the operation of a public library when the employees of the library and library premises are not included in the policy. Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966).

Complaint.—This subdivision contemplates that it is appropriate for the complaint to contain allegations regarding liability insurance and waiver of governmental immunity. Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968).

Falling on Public Walk within Courthouse Grounds.—The liability of a county for injuries sustained by a pedestrian falling on a public walk within the courthouse grounds is no more extensive than the liability of a city to a pedestrian falling upon a public sidewalk maintained by the city. Cook v. County of Burke, 272 N.C. 94, 157 S.E.2d 611 (1967).

Cited in Bynum v. Onslow County, 1 N.C. App. 351, 161 S.E.2d 607 (1968).

(46) Water Systems and Sanitary Sewer Systems.—

Authority for County to Appropriate Nontax Funds for Water and Sewer System.—See opinion of Attorney General to Mr. M. Alexander Biggs, Special Counsel, Nash County Board of Commissioners, 3/16/70.

(47) County Plumbing Inspectors.—The county commissioners may designate and appoint one or more plumbing inspectors whose duties shall be: to inspect and approve the installation of all plumbing and water systems, either or both, hereafter installed in all unincorporated areas;

to issue certificates of approval of such inspections; to enforce all State and local laws governing plumbing installations and materials; to collect inspection fees, determined by the county commissioners, and deliver same to the county treasurer; and to furnish a surety bond approved by the county commissioners. The county commissioners may pay the plumbing inspector a fixed salary, or apply inspection fees collected in lieu thereof, for services rendered. It shall be unlawful for the plumbing inspector to be financially connected in any way with persons, firms or corporations who install plumbing systems or sell plumbing fixtures, and his services may be terminated when deemed wise and necessary by the county commissioners. (1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 1031; 1961, cc. 763, 884, 1036; 1963, c. 868; 1965, cc. 243, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, s. 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1064, s. 4.)

Editor's Note.—

The first 1965 amendment added Mecklenburg to the list of counties in the former last paragraph.

The second 1965 amendment, effective July 1, 1965, made this subdivision applicable to Cabarrus County and added a proviso at the end of the former last paragraph.

The third 1965 amendment inserted "all State and local laws governing plumbing installations and materials" for "regulations pertaining to plumbing as adopted by respective county boards of health" in the first sentence.

The fourth 1965 amendment added "Cleveland" to the list of counties in the former last paragraph.

The first 1967 amendment inserted "Beaufort," the second 1967 amendment added "Wayne," the third 1967 amendment added "Onslow," and the fourth 1967 amendment added "Harnett" to the list of counties in the former last paragraph.

Session Laws 1969, c. 1003, effective July 1, 1969, deleted the former second paragraph, restricting the application of this subdivision to certain named counties. That paragraph had previously been amended by Session Laws 1969, c. 675, which added Alamance to the list of counties, and Session Laws 1969, c. 918, which added Lenoir to the list of counties to which this subdivision applied. Session Laws 1969, c. 1064, inserted "all" preceding "unincorporated" near the beginning of the subdivision.

(47a) County Electrical Inspectors. — The county commissioners of each county may, in their discretion, designate and appoint one or more electrical inspectors, who shall qualify as hereinafter prescribed, whose duty it shall be to enforce all State and local laws governing electrical installations and materials and to make inspections of all new electrical installations and such reinspections as may be prescribed by the county commissioners, in buildings located in all unincorporated areas of the county, and to issue a certificate of approval where such installations fully meet the requirements set forth in State and local laws. In lieu of appointing a separate electrical inspector, the county commissioners may designate as county electrical inspectors:

a. An electrical inspector of any other county or counties, with the approval of the board of county commissioners of such other county or counties;
b. A municipal electrical inspector of any municipality or municipalities within the county, with the approval of the municipal governing body;
c. The county fire marshal; or
d. A county building inspector appointed under the provisions of G.S. 153-9(52).

The county commissioners shall fix the fees to be charged by such county electrical inspector, which fees shall be paid by the owner of the property inspected. The county commissioners may pay the electrical inspector a fixed salary or may in lieu thereof reimburse him for his services by paying over any inspection fees which he collects or parts of such fees. The board of county commissioners may make necessary appropriations for the special purpose of paying the salary or salaries of county electrical inspectors and any expenses pertaining to electrical inspection.

It shall be unlawful for the county electrical inspector or any of his authorized agents to engage in the business of installing electrical wiring, devices, appliances, or equipment, and he shall have no financial interest in any concern engaged in such business in the county, at any time while he fills this position.

Before confirmation of his appointment, the electrical inspector shall take and pass a qualifying examination based on the electrical regulations included in the latest edition of the State Building Code, as filed with the Secretary of State. This examination shall be in writing and shall be conducted according to the rules and regulations prescribed by and under the supervision of the Chief State Electrical Inspector or Engineer of the State Department of Insurance and the Board of Examiners of Electrical Contractors. The prescribed rules and regulations may provide for the appointment of class I, class II, and class III inspectors in accordance with the qualifications revealed by the examination. Examinations shall be given quarterly in Raleigh, or in such other places as may be designated by the Chief State Electrical Inspector or Engineer, at his discretion. Examinations shall be based on the type and character of electrical installations being made in the territory in which the applicant wishes to serve as electrical inspector. An electrical inspector having qualified for a class I appointment shall be eligible without further examination to serve as electrical inspector anywhere in the State, but an inspector having qualified for a class II or class III appointment shall be limited to the territory for which he has qualified.

Upon passing the required examination, the applicant shall be issued a certificate by the North Carolina Commissioner of Insurance approving him as inspector for a designated territory. Such certificate shall be renewed annually between January 1 and January 31 and shall be subject to cancellation at any time if the inspector is removed from office for cause by the board of county commissioners, which removal is hereby authorized. The fee for examination shall be five dollars ($5.00). The annual renewal fee for a certificate of appointment shall be one dollar ($1.00).

If the person appointed as electrical inspector by the county commissioners fails to take the examination or to make the necessary passing grade, the county commissioners shall continue to make appointments until one or more applicants has passed the examination. In the interim, a temporary inspector may act with the approval of the Commissioner of Insurance.

The inspector appointed shall give a bond approved by the county commissioners for the faithful performance of his duties. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1969, c. 1064, s. 1.)

Editor's Note. — The 1969 amendment repealed former § 160-122, relating to county electrical inspectors, and enacted this subdivision in lieu thereof.

(51) Special Tax Levy; Revaluation Expense.—The boards of county commissioners of the several counties are hereby authorized to levy such special property tax at such rate as may be necessary for the special purpose of meeting the expense of the revaluation of real property as required by G.S. 105-286; such special property tax shall be in addition to any tax allowed by law for such purpose and shall be in addi-

tion to the rate allowed by the Constitution for general expenses. (1959, c. 704, s. 5; 1971, c. 806, s. 4; c. 931, s. 2.)

Editor's Note.—

The first 1971 amendment, effective July 1, 1971, substituted "105-296" for "105-278."

The second 1971 amendment, effective July 1, 1971, substituted "G.S. 105-286" for "G.S. 105-296" in this subdivision.

(52) County Building Inspectors.—The board of county commissioners may appoint one or more building inspectors to serve at the will of the board, whose duties shall be: to enforce the State Building Code adopted under Article 9 of Chapter 143 of the General Statutes; to enforce any county building regulations adopted under G.S. 143-138(b) or 143-138(e); to enforce any county zoning ordinance or ordinances; to collect inspection fees determined by the board of county commissioners, which the board is hereby authorized to impose, and deliver same to the county treasurer; to furnish a surety bond for the faithful performance of his duties and the safeguarding of any public funds coming into his hands, approved as to amount, form, and solvency of sureties by the board of county commissioners; and to carry out such related duties as may be specified by the board of county commissioners. The territorial jurisdiction of such inspectors shall be all unincorporated areas of the county.

In lieu of appointing a separate building inspector, the board of county commissioners may designate as county building inspectors:

a. A building inspector of any other county or counties, with the approval of the board of county commissioners of such other county or counties;
b. A municipal building inspector of any municipality or municipalities within the county, with the approval of the municipal governing body;
c. The county fire marshal;
d. A county electrical inspector appointed under the provisions of subdivision (47a) hereof;
e. A county plumbing inspector appointed under the provisions of G.S. 153-9(47); or
f. Any other person or persons whom they deem to be qualified.

The board of county commissioners may pay a building inspector a fixed salary or may in lieu thereof reimburse him for his services by paying over part or all of any inspection fees which he collects. The board of county commissioners may make necessary appropriations for the special purpose of paying the salary or salaries of county building inspectors and any expenses pertaining to building inspection.

The board of county commissioners may enter into and carry out contracts with any municipality or municipalities within the county, or with any other county or counties, under which the parties agree to support a joint building inspection department. The board of county commissioners and the municipal governing body may make any necessary appropriations for such a purpose.

On official request of the governing body of any municipality within the county, the board of county commissioners may direct the county building inspector to exercise his powers within said municipality, and he shall thereupon be empowered to do so until such time as the municipal governing body officially withdraws its request. (1959, c. 940; 1963, c. 639; 1965, c. 371; 1967, c. 495, s. 1; 1969, c. 918; c. 1010, s. 4; c. 1064, s. 5.)

Editor's Note.—

The 1965 amendment deleted Scotland from the former last sentence of this subdivision.

The 1967 amendment deleted Harnett from the former last sentence of this subdivision.

Session Laws 1969, c. 1010, effective July 1, 1969, deleted the former last paragraph, which provided that this subdivision should not apply to Cherokee, Clay, Graham, and Macon counties. Session Laws 1969, c. 918, had previously struck Lenoir from the list of counties in the former last paragraph. Session Laws 1969, c. 1064, added the last sentence of the first paragraph, substituted "subdivision (47a) hereof" for "G.S. 160-122" in subparagraph d of the second paragraph and inserted "part or all of" near the end of the first sentence of the third paragraph.

(54) To Regulate and Control Parking of Motor Vehicles on County-Owned Property.—To regulate and control by resolution the parking of motor vehicles on county-owned property, and to provide that violation of regulations adopted pursuant to such resolution shall be a misdemeanor punishable by a fine of not more than one dollar ($1.00): Provided, that such resolution shall not apply to streets, roads or highways in the county.

Boards of county commissioners may also provide by resolution adopted pursuant to this section that any motor vehicle parked on county-owned property when so designated by sign or otherwise in violation of regulations adopted may be removed or towed away from said county-owned property by or under the direction of any official designated by said governing body to a storage area or garage, and that the owner shall be deemed to have appointed such designated official his agent for the purpose of arranging for the transportation and safe storage of such vehicle and accepting a warehouse receipt from the person or firm providing such transportation and storage. The owner of such vehicle before obtaining possession thereof shall pay to the county all reasonable costs incidental to the removal and storage and any fines due for violation of said parking regulation. (1961, c. 191; 1971, c. 109.)

Editor's Note.—

The 1971 amendment added the second paragraph in this subdivision.

(54a) To Provide for Removal and Disposition of Abandoned Motor Vehicles; to Prohibit Abandonment of Motor Vehicles; Liability to Owner of Abandoned, etc., Vehicle.—To provide by ordinance not inconsistent with grant of authority of subdivision (55) of this section that whenever any motor vehicle is abandoned on county-owned property or public grounds within such county or is abandoned upon privately owned property, any such vehicle may be removed for safekeeping by or under the direction of the sheriff or other official so designated by the board of commissioners to a storage garage or area; provided that no such vehicle shall be so removed from privately owned premises without the written request of the owner, lessee or occupant of the premises unless the same has been declared by the board of commissioners to be a health or safety hazard. Any such ordinance may also provide that the person at whose request such vehicle is removed from privately owned property shall indemnify such county against any loss or expense incurred by reason of the removal, storage or sale thereof. Written notice by mail of such removal shall be promptly given to the registered owner of the vehicle. The owner of such vehicle, before obtaining possession thereof, shall pay to the county all reasonable costs incidental to the removal, storage and locating the owner of the vehicle. Should such owner fail or refuse to pay the costs or should the identity or whereabouts of such owner be unknown and unascertainable after a diligent search has been made and after notice to him at his last known address and to the holder of any lien of record in the office of the Department of Motor

Vehicles against the vehicle, the officer designated by the board of commissioners may, after holding the vehicle for 30 days and after having the value of the vehicle determined by three disinterested dealers or garagemen and after 20 days' notice has been given to the Department of Motor Vehicles before the date of sale, dispose of the same by public or private sale or in the event of an appraised value of less than fifty dollars ($50.00) by other means in the discretion of the board of commissionerss or the designated officer and the proceeds of any sale shall be forwarded to the treasurer or similar officer of the county. The treasurer or similar officer shall pay from the proceeds of any sale the cost of removal, storage, investigation as to ownership and sale, and liens in that order. Subject to b below, any remaining proceeds shall be deposited in the general fund of the county. Upon receipt of a county's bill of sale from a purchaser or other person entitled to receive any vehicle disposed of as hereinbefore provided, the Department of Motor Vehicles shall issue a certificate of title to said person if a certification of title for such vehicle is required by law.

a. For the purposes of this section, a vehicle shall be determined to have been abandoned in the following circumstances:

1. It has been left upon county-owned property or public grounds within the county in violation of a law or ordinance prohibiting parking; or
2. The vehicle fails to display a current license plate; or
3. It is partially dismantled or wrecked; or
4. It is incapable of self-propulsion or being moved in the manner for which it was originally intended; or
5. It is left on property owned or operated by the county for a period of not less than 24 hours; or
6. It is left on private property without the consent of the owner, occupant or lessee thereof for a period of not less than two hours;
7. It is left on any public grounds within such county for a period of not less than seven days.

b. If, after the sale, the ownership of any vehicle at the time of its removal is established satisfactorily to the officer so designated by the board of commissioners by the person claiming such ownership, the owner shall be paid by such officer so much of the proceeds from the sale of such vehicle as remains after paying the cost of removal, storage, investigation of ownership and sale and any liens as hereinabove required.

c. Any ordinance adopted pursuant hereto may provide that no person shall abandon within the above definitions any vehicle within the county and that no person shall leave or allow to remain any partially dismantled, nonoperating, junked or otherwise discarded vehicle on property under his control.

d. No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost or stolen vehicle, or for disposing of such vehicle as provided by this subdivision.

e. The term "motor vehicle" or "vehicle" as used herein is hereby defined to include all machines designed to be self-propelled or pulled and intended to travel along the ground by means of wheels, treads, runners or slides.

f. Nothing herein shall be construed to apply to any vehicle in an enclosed building or vehicle on the premises of a business enterprise being operated in a lawful place and manner and the vehicle being necessary to the operation of such business enterprise, or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the county. (1971, c. 489.)

Editor's Note. — The 1971 amendment added this subdivision.

(54b) To Provide for Disposition of Junk Motor Vehicles.—The board of commissioners may provide by ordinance that whenever a vehicle is found to be an abandoned motor vehicle as defined in G.S. 153-9 (54a)a and, in addition, is found to be inoperable, dismantled or damaged, five years old or older, and worth less than twenty-five dollars ($25.00), it shall be deemed to be a junk motor vehicle. A junk motor vehicle may be removed from public or private property under the direction of an official designated by the board of commissioners to a storage area or garage, provided no such vehicle shall be removed from private property without the written request of the owner, lessee or occupant of the property on which the vehicle is located unless the same has been declared a health or safety hazard by the board of commissioners. Any junk motor vehicles so removed shall be held at least 15 days. The owner of any such junk motor vehicle may reclaim his vehicle during the 15-day retention period by exhibiting proof of ownership to a designated official and paying all reasonable costs incident to the removal and storage of the vehicle and administrative expenses. If, after holding the vehicle 15 days, it remains unclaimed, said vehicle may be destroyed or otherwise disposed of as provided by ordinance or resolution of the board of commissioners. Further, any board of commissioners may, with the consent of the owner of the vehicle, remove and dispose of any motor vehicle as a junk motor vehicle regardless of the value, condition or age of such vehicle and without waiting the aforesaid 15-day period. Any proceeds derived from the disposition of junk motor vehicles shall be retained by the county for deposit in the general fund. Notice shall be given within 15 days after final disposition to the Department of Motor Vehicles, that such vehicle has been deemed to be a junk motor vehicle and has been disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can reasonably be determined. No person shall be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any abandoned, lost or stolen junk motor vehicle for disposing of such vehicle as contemplated by this subdivision. (1971, c. 489.)

Editor's Note. — The 1971 amendment added this subdivision.

(55) To Adopt Ordinances for the Better Government of the County.—To adopt ordinances to prevent and abate nuisances, whether on public or private property; ordinances supervising, regulating, or suppressing or prohibiting in the interest of public morals, comfort, safety, convenience and welfare, public recreations, amusements and entertainments, and all things detrimental to the public good; and ordinances in exercise of the general police power not inconsistent with the Constitution and laws of the State or the Constitution and laws of the United States. Nothing herein shall affect the authority of local boards of health to adopt rules and regulations for the protection and promotion of public health. Nothing herein shall confer upon any county any power or authority (not now possessed by such county) relating to the regulation or control of vehicular or pedestrian traffic on streets and highways under the control of the State Highway Commission, nor

to the regulation or control of highway rights-of-way in any manner inconsistent with State law or ordinances of the State Highway Commission, nor to the regulation of the rights-of-way or rights-of-passage of public utilities, electric membership corporations or public agencies of the State. Ordinances adopted pursuant to this subdivision shall apply throughout the county, except that such ordinances shall not be applicable within the corporate limits or jursidiction of any municipality which has conducted the most recent election required by its charter or the general law, whichever is applicable, unless the governing body thereof shall, by resolution, agree to such ordinance.

No ordinance adopted pursuant to authority granted by this section may be finally passed at the meeting at which it is introduced unless it receives the unanimous approval of all the members of the board (not including the chairman if he does not participate in the vote). An ordinance which is approved by less than a unanimous vote shall be voted upon again at the next regular meeting of the board, and shall be adopted if it then receives a majority of the votes cast. This paragraph does not apply to ordinances adopted under authority of other portions of the General Statutes or of local acts.

The board of commissioners shall cause the clerk to the board to keep an ordinance book which shall be separate from the commissioners' minute book and in which shall be recorded all county ordinances. No ordinance, whether adopted pursuant to this subdivision or another law, shall be effective until it is recorded and indexed in the ordinance book. (1963, c. 1060, ss. 1, 1½; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3.)

Editor's Note.—

The 1969 amendment rewrote this subdivision as previously amended in 1965 and 1967.

The 1971 amendment, effective July 1, 1971, rewrote the third sentence of the first paragraph and rewrote the second and third paragraphs.

For an article on local legislation in the General Assembly, discussing this section, see 45 N.C.L. Rev. 340 (1967).

Opinions of Attorney General. — Mr. Harley B. Gaston, Jr., Assistant Gaston County Attorney, 11/28/69.

Not Grant of Zoning Authority to Counties.—See opinion of Attorney General to Mr. Robert W. Upchurch, Community Planner, Department of Local Affairs, 2/2/70.

This subdivision is a Home Rule statute, applicable throughout the State. It enables the county commissioners of every county to enact ordinances in the exercise of the general police power within the prescribed territory just as other statutes enable the governing bodies of cities and towns to enact ordinances in the exercise of the general police power within their corporate limits. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Similar to Statutes Conferring General Police Power on Cities and Towns.—This subdivision does not confer or withhold authority in respect of specific activities; on the contrary, it confers authority to enact ordinances in the exercise of the general police power. In this respect, this subdivision is similar to the statutes which confer general police power upon cities and towns. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

It Does Not Contravene Constitutional Limitations on Local, Private and Special Legislation.—This section is a general law and therefore does not contravene N.C. Const. 1868, Art. II, § 29. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970). See N.C. Const., Art. II, § 24.

(56) Beach Erosion Control, Protection from Hurricane Floods.—To appropriate funds to finance the acquisition, construction, reconstruction, extension, maintenance, improvement, or enlargment of groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements which are designed for the control of beach erosion or for protection from hurricane floods or for the preservation or restoration of facilities and natural features which afford protection to the beaches and other land areas of the county and to the life and prop-

erty thereon. Expenditures by counties for these purposes are hereby declared to be a special purpose and a necessary expense, and all such counties shall have authority and are hereby given special approval to levy special taxes and to appropriate tax and nontax money for such purposes. (1965, c. 307, s. 1; 1971, c. 1159, s. 3.)

Editor's Note. — The 1965 amendment added this subdivision.

The 1971 amendment in the first sentence deleted "In those counties bounded in whole or in part by the Atlantic Ocean" preceding "To appropriate," inserted "reconstruction," inserted "maintenance," and substituted "hurricane floods" for "floods and hurricanes." The amendment in the second sentence deleted "not to exceed ten cents (10¢) on the one hundred dollar ($100.00) evaluation" following "special taxes."

Session Laws 1971, c. 1159, s. 8, contains a severability clause.

(57) Exercise of Power of Eminent Domain.—The board of county commissioners of any county is hereby authorized and empowered to acquire by condemnation proceedings any and all lands, together with improvements thereon, or interests in lands, reasonably necessary for the purpose of construction, expansion, enlargement, improvement, maintenance and operation of a courthouse or jail. The powers herein granted contemplate that the board of county commissioners shall first be unable to agree with the owners of any lands, or interest in lands, for voluntary sale, purchase, or acquisition, and condemnation may then be had in the same manner and under the same procedure as is provided in Article 2, Chapter 40, of the General Statutes, as the same may from time to time provide. (1965, c. 934.)

Local Modification.—Guilford: 1969, c. 964; 1971, c. 299; Iredell: 1971, c. 1004.

Editor's Note. — The 1965 amendment added this subdivision.

For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

(58) Provision for Ambulance Services. — a. Upon finding as fact, after notice and public hearing, that exercise of the powers enumerated below is necessary to assure the provision of adequate and continuing ambulance services and that exercise of the powers enumerated below are necessary to preserve, protect and promote the public health, safety and general welfare, boards of county commissioners within their respective counties are hereby granted powers to:

1. Enact an ordinance making it unlawful to provide ambulance services or to operate ambulances without having been granted a franchise to do so;
2. Grant franchises to ambulance operators, based within or without the county; provided, that any ambulance operator providing ambulance services in any county upon May 9, 1967, and who continues to provide such services up to and including the effective date of any ordinance adopted pursuant to this subdivision, and who submits to the board of commissioners of any such county evidence satisfactory to the board of such continuing service, shall be entitled to a franchise to serve at least that part of said county in which such service has been continuously provided, and the board of commissioners of any such county shall, upon finding that all other requirements of this act are met, grant such franchise;
3. Limit the number of ambulances to be operated within the county, and by any operator;
4. Determine and prescribe areas of franchised service within the county;

5. Fix and change from time to time reasonable charges for franchised ambulance services;
6. Set minimum limits of liability insurance coverage for ambulances;
7. Contract with franchised ambulance operators for transportation to be rendered upon call of a county or municipal agency or department and for transportation of bona fide indigents or persons certified by the county welfare authorities to be public assistance recipients;
8. Establish other necessary regulations not inconsistent with statutes or regulations of the State Board of Health relating to ambulance service.

In addition to the powers set forth above, the board of commissioners of any county or any portion thereof is hereby authorized to provide, or cause to be provided, ambulance service and shall have the power to own, operate and maintain ambulances, to provide and to make reasonable charges for ambulance services, or to contract with any public or private agency, person, firm, corporation or association, including public and private hospitals, for the rendering of ambulance services.

In order to finance the costs of assuring adequate and continuing ambulance services in any manner authorized by this act, boards of county commissioners are hereby authorized, in addition to the expenditure of nontax funds, to levy annually a special tax at such rate as may be necessary on each one hundred dollars ($100.00) of assessed valuation of taxable property within the county or within any portion of the county affected by lack of ambulance services; such special property tax shall be in addition to any tax allowed by law for such purpose and shall be in addition to the rate allowed by the Constitution for general purposes and may be levied in a special tax district created by the board of county commissioners in any portion of the county affected by lack of ambulance service. Such levy and the expenditure of the proceeds thereof for the purposes authorized herein are hereby declared to be a necessary expense and a special purpose and the special approval of the General Assembly is hereby given for such levy.

In the event that a court of competent jurisdiction should decide that such levy and expenditure is not a necessary expense, then and in such event, the boards of county commissioners shall thereupon have the power and authority to call a referendum upon the question of the levy of such tax in the same manner and according to the laws governing general elections for county officers in the respective counties.

b. Any municipality may exercise, within its corporate limits only, all those powers enumerated in paragraph a of this subdivision either upon the request of a municipality to the board of county commissioners and upon the adoption by the board of county commissioners of a resolution permitting such exercise, or after 180 days written notice to the board of county commissioners if the county is not exercising such powers at the end of such 180 days period.

c. No county ordinance enacted, or other county action taken, pursuant to powers granted herein shall be effective within a municipality which is at the time exercising such powers until 180 days after written notice to the governing body of the municipality.

d. Nothing herein shall be construed so as to authorize any county to regulate in any manner ambulances owned and operated by a municipality, or to authorize any municipality to regulate in any manner ambulances owned and operated by a county.

e. Any ambulance operated by a county or a municipality under authority of this section shall be subject to the provisions of G.S. 130-230 through 130-234 and to the regulations of the State Board of Health adopted thereunder.

f. In the event a county elects to operate and maintain a county ambulance service pursuant to this subdivision, the board of county commissioners may, but is not required to, create an ambulance commission of five members and appoint the members thereof to serve at the pleasure of the board of county commissioners. The board of county commissioners is expressly authorized to delegate to this commission full and complete powers of the board of county commissioners in operating and maintaining such county ambulance service, or it may limit the authority delegated to such commission. Any powers delegated pursuant to this subdivision may be modified or rescinded by the board of county commissioners at any time. (1967, c. 343, s. 5; 1969, c. 147.)

Local Modification. — Forsyth, as to paragraph a 1: 1969, c. 548.

Editor's Note. — The 1967 amendment added this subdivision.

In addition to adding this subdivision, Session Laws 1967, c. 343, amended §§ 130-3 and 20-10 and added §§ 14-286.1 and 130-230 to 130-235.

Section 7, c. 343, Session Laws 1967, provides: "The powers herein granted to counties and municipalities are in addition to and not in substitution of existing powers granted by general laws or local acts."

The 1969 amendment added paragraph f at the end of this subdivision.

Opinions of Attorney General. — Mr. E. Ray Ethridge, Camden County Attorney, 8/1/69.

The regulation of ambulance service is a valid and legitimate exercise of the police power. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

Authority of County Cannot Exceed That Given by Enabling Act.—The authority of the county to regulate ambulance service—whether it be by franchise, permit, certificate of public convenience or necessity, license or whatever name is given—can only come from and cannot exceed that given by the enabling act. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

Paragraph (a)(2) Unconstitutional. — Because of the possible retroactive application of the grandfather rights provided for in the enabling act, paragraph (a)(2) of this subdivision is unconstitutional since it invades the personal and property rights guaranteed and protected by N.C. Const. 1868, Art. I, §§ 1, 7, 17 and 31. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969). See N.C. Const., Art. I, §§ 1, 19, 32 and 34.

Paragraph (a)(2) of this subdivision is unconstitutional since it does not afford equal protection to all ambulance operators who are lawfully doing business on the effective date of the ordinance, and since there must be a finding of public convenience and necessity as to those operators who lawfully and in good faith began ambulance services after May 9, 1967 but before the effective date of the ordinance. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

Paragraph (a)(6) Does Not Contravene Constitutional Prohibitions against Monopolies and Exclusive Emoluments. — Paragraph (a)(6) of this subdivision is not void as being in contravention of constitutional prohibitions against monopolies and exclusive emoluments, since paragraph (a)(6) does not provide that liability insurance shall be the exclusive method of indemnifying persons or property against loss due to negligent operation of the ambulance service. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

County Ordinance Regulating Ambulance Service Unconstitutional.—See Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

Contract with Funeral Home for Ambulance Services.—In the absence of a vote or of authority expressly granted by the legislature, a county may not legally contract with a funeral home for ambulance services, and its attempt to do so prior to the enactment of this subdivision was ultra vires. Moody v. Transylvania County, 271 N.C. 384, 156 S.E.2d 716 (1967).

(59) Appropriations and Expenditures to Assist Facilities for the Mentally Retarded.—The board of county commissioners of each county of the State is hereby authorized, in its discretion, to appropriate and expend from nontax revenues such amounts as in its discretion may be deemed wise and expedient by way of making a donation to any licensed facility for the mentally retarded, whether publicly or privately owned, and whether located within the borders of such county or not, to assist in providing better and more adequate facilities and treatment for the mentally retarded, when and if, in the opinion of said board, such donation would involve the care which would be available to the residents of such county. (1967, c. 1074.)

Editor's Note. — The 1967 amendment added this subdivision.

(60) Aid to Sheltered Workshops or other Vocational Rehabilitation Facilities.—The board of commissioners of each county is hereby authorized, in its descretion, to appropriate funds from sources other than locally levied and collected taxes, and to render other forms of assistance, to private, nonprofit, charitable organizations offering work and training activities to the physically or mentally handicapped, such organizations being commonly known as sheltered workshops, provided that the resolution appropriating county funds to such organizations shall specifically state the object to which the funds are to be applied, and the commissioners shall require a periodic accounting for the expenditure of such funds to insure that they are spent for the intended purpose. (1969, c. 802.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, added this subdivision.

(61) Ordinances and Proclamations Dealing with States of Emergency. — The board of commissioners of any county may enact ordinances dealing with states of emergency as authorized by G.S. 14-288.13, and the chairman of the board of commissioners of any county may issue proclamations imposing prohibitions and restrictions in emergencies under the authority of G.S. 14-288.14 and, to the extent authorized in ordinances dealing with states of emergency, under the authority of G.S. 14-288.13. (1969, c. 869, s. 2.)

Editor's Note. — The 1969 amendment added this subdivision.

(62) Any county, city, town, incorporated village, sanitary district or other local governmental unit which is a political subdivision of the State of North Carolina is authorized and empowered to submit to a vote of the people any lease, contract, agreement or other contractual obligation the effect of which is to create a debt for a local governmental unit within the meaning of Article V, § 4, or Article VII, § 6, of the Constitution of North Carolina. Any referendum held pursuant to the provisions of this subdivision shall be conducted according to the law applicable to bond elections for the particular local governmental unit concerned. (1969, c. 944.)

Editor's Note. — The 1969 amendment added this subdivision.

The references to the Constitution in this subdivision are to the Constitution adopted in 1868, as amended.

(63) The board of county commissioners of any county is hereby authorized to finance methods of disposing junked or abandoned vehicles within

any county. The board may impose annually a tax not to exceed one dollar ($1.00) for each vehicle registered in the county for financing these disposal methods.

This subdivision shall apply to the following counties: Guilford. (1969, c. 956.)

Editor's Note. — The 1969 amendment added this subdivision.

(64) To plan and execute training and development programs for law-enforcement agencies, and for that purpose:

a. To contract with other counties, municipalities, and the State and federal governments and their agencies;
b. To accept, receive, and disburse funds, grants, and services;
c. To create joint agencies to act for and on behalf of participating counties and municipalities;
d. To make application for, receive, administer, and expend federal grant funds; and
e. To appropriate and expend available tax or nontax funds. (1969, c. 1145, s. 2.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, added this subdivision.

(65) Reserved.

(66) To enact an ordinance prohibiting or regulating fishing from any bridge for the purpose of protecting persons fishing on the bridge from passing vehicular or rail traffic. Such ordinance may also prohibit or regulate fishing from any bridge within the territorial jurisdiction of any municipality whose governing body by resolution agrees to such prohibition or regulation; provided, however, that any such municipal governing body may upon 30 days' written notice withdraw its approval of the county ordinance, and that ordinance shall have no further effect within the municipality's jurisdiction. The ordinance shall provide that signs shall be posted on any bridge where fishing is prohibited or regulated reflecting such prohibition or regulation. In any event, no one may fish from the drawspan of any regularly attended bridge.

The authority granted under the provisions of this subdivision shall be subject to the authority of the State Highway Commission to prohibit fishing on any bridge on the State Highway System. (1971, c. 690, ss. 1, 6.)

Editor's Note. — The 1971 amendment added this subdivision.

Only Part of Section Set Out.—Only the opening paragraph of the section and the subdivisions changed or added by the amendments are set out.

§ **153-10**: Repealed by Session Laws 1969, c. 1003, s. 3, effective July 1, 1969.

§ **153-10.1. Local: Removal and disposal of trash, garbage, etc.**— The board of county commissioners is hereby authorized and empowered, in its discretion, to issue, pass and promulgate ordinances, rules and regulations governing the removal, method or manner of disposal, depositing or dumping of any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever within the rural areas of the county and outside and beyond the corporate limits of any municipality of said county. A violation of any of the ordinances, rules or regulations issued, passed or promulgated under the authority of this section shall be a misdemeanor, and upon plea of nolo contendere, or a plea of guilty, or upon a conviction, any offender shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty (30) days, and each week that any such violation continues to exist shall be a separate offense. (1955, c. 1050; 1957, cc. 120, 376; 1961, cc. 40, 711, 803; c. 806, s. 1; 1965, c. 452; 1967, cc. 34, 90; 183, s. 1; cc. 304, 339; c. 495, s. 4; 1969, cc. 79, 155, 176; c. 234, s. 1; c. 452; c. 1003, s. 4.)

Editor's Note.—

The 1965 amendment inserted "Forsyth" in the list of counties in the former second paragraph.

The first 1967 amendment inserted "Union," the second 1967 amendment inserted "Pitt," the third 1967 amendment inserted "Lincoln," the fourth 1967 amendment inserted "Macon," the fifth 1967 amendment inserted "Carteret," "Craven" and "Pamlico," and the sixth 1967 amendment inserted "Harnett" in the list of counties in the former second paragraph.

Section 2, c. 183, Session Laws 1967, provides: "Nothing in this act shall be deemed in any way to affect Lincoln County's participation in General Statute 153-272, or to be in conflict with the said act as it may apply to Lincoln County."

The 1969 amendment, effective July 1, 1969, deleted the former second paragraph, which restricted the application of this section to certain named counties and which had previously been amended by Session Laws 1969, cc. 79, 155, 176; c. 234, s. 1; c. 452.

§ 153-11.2. Appropriations for construction of water and sewer lines.

Authority for County to Appropriate Nontax Funds for Water and Sewer System.—See opinion of Attorney General to Mr. M. Alexander Biggs, Special Counsel, Nash County Board of Commissioners, 3/16/70.

§ 153-11.3. Donations to orthopedic hospitals.—The board of county commissioners of each county of the State is hereby authorized, in its discretion, to appropriate and expend from nontax revenues such amounts as in its discretion it may be deemed wise and expedient by way of making a donation to any orthopedic hospital, whether publicly or privately owned, and whether located within the borders of such county or not, to assist in providing better and more adequate orthopedic hospital facilities and treatment when and if, in the opinion of said board, such donation would involve the orthopedic care which would be available to the residents of such county. (1967, c. 464.)

§ 153-12: Repealed by Session Laws 1969, c. 180, s. 1, effective July 1, 1969.

§ 153-13. Compensation and allowances of county commissioners.—The compensation and allowances of chairmen and other county commissioners may be fixed by the respective boards of commissioners by publication in and adoption of the annual budget ordinance. (Code, s. 709; Rev., s. 2785; 1907, c. 500; C. S., s. 3918; 1969, c. 180, s. 1; 1971, c. 1125, s. 1.)

Local Modification.—Alamance: 1965, c. 340, s. 4; 1969, c. 318; Mitchell: 1969, c. 683; Pasquotank: 1965, c. 664, s. 3; 1969, c. 312.

Editor's Note.—The 1969 amendment, effective July 1, 1969, rewrote the section. Section 3 of the amendatory act provides that all public, local, and special acts prescribing the compensation and allowances of board of county commissioners shall remain in full force and effect until altered as provided by this act.

The 1971 amendment again rewrote this section.

Session Laws 1971, c. 1125, s. 2, provides: "All public, local, and special acts prescribing the compensation and allowances of county commissioners shall remain in full force and effect until altered pursuant to this act."

ARTICLE 3.

Forms of County Government.

I. Modification of Form of Government.

§ 153-16. Modification of form of government.—(a) It is hereby declared to be the policy of the General Assembly that the qualified voters of each county may alter the composition and mode of election of the board of commissioners for their county within the options and according to the procedures prescribed by this article.

(b) The voters may alter the number of members of the board of commissioners to any number not less than three nor more than seven, except that an even number may not be adopted if option (4) of subsection (c) is adopted.

(c) The voters may alter the terms of office of members of the board of commissioners by adopting one of the following options:

(1) Members of the board shall be elected for terms of two years;
(2) Members of the board shall be elected for terms of four years;
(3) Members of the board shall be elected for overlapping terms of four years;
(4) The board shall consist of three, five, or seven members serving a combination of four- and two-year terms so that a majority of the board is elected every two years.

If the board consists of three members and option (3) is adopted as hereinafter provided, at the first election following such adoption the two members receiving the highest number of votes shall be elected for a term of four years, and the member elected with the lowest number of votes for a term of two years. Thereafter, all candidates shall be elected for terms of four years. If the board consists of five or seven members and option (3) is adopted as hereinafter provided, at the first election following such adoption three members of a five-member board or four members of a seven-member board receiving the highest number of votes shall be elected for terms of four years and the remaining members for terms of two years. Thereafter, all candidates shall be elected for terms of four years. If the board consists of four or six members, and option (3) is adopted as hereinafter provided, at the first election following such adoption the two members of a four-member board and the three members of a six-member board receiving the highest number of votes shall be elected for terms of four years, and the remaining members shall be elected for terms of two years. Thereafter, all candidates shall be elected for terms of four years.

If option (3) is adopted in conjunction with either option (2) or (3) of subsection (d), members of the board first elected under option (3) shall at their first meeting determine by lot which of them will serve four-year terms, and the remainder shall serve two-year terms. The number of four-year terms shall be one half of the membership of a board with an even number of members, and a simple majority of a board with an odd number of members. After the expiration of these initial terms, all members shall be elected for terms of four years.

If option (4) is adopted with a three-member board, at the first election following such adoption, the candidate receiving the highest number of votes shall be elected for a term of four years, and the two candidates receiving the next highest number of votes shall be elected for terms of two years. Thereafter, the candidate receiving the highest number of votes shall be elected for a term of four years and the candidate receiving the next highest number of votes shall be elected for a term of two years. If option (4) is adopted with a five-member board, at the first election following such adoption the two members receiving the highest number of votes shall be elected for a term of four years and the three members receiving the next highest number of votes shall be elected for terms of two years. Thereafter, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years. If option (4) is adopted with a seven-member board, at the first election following such adoption the three candidates receiving the highest number of votes shall be elected for terms of four years, and the four candidates receiving the next highest number of votes shall be elected for terms of two years. Thereafter, the three candidates receiving the highest number of votes shall be elected for terms of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years.

(d) The voters may alter the mode of election of members of the board of commissioners by adopting one of the following options:

(1) All candidates shall be nominated and elected by all the qualified voters of the county;

(2) The county shall be divided into districts; commissioners shall be apportioned to the districts so that each member represents the same number of persons as near as may be, except for members apportioned to the county at large; the qualified voters of each district shall nominate candidates for the seats apportioned to that district; all the qualified voters of the county shall nominate candidates for seats apportioned to the county at large, if any; and all candidates shall be elected by all the qualified voters of the county;

(3) The county shall be divided into districts; commissioners shall be apportioned to the districts so that each member represents the same number of persons as near as may be, except for members apportioned to the county at large; the qualified voters of each district shall nominate and elect candidates for seats apportioned to that district; and all the qualified voters shall nominate and elect candidates for seats apportioned to the county at large, if any;

(4) The county shall be divided into districts; commissioners shall be apportioned to the districts so that each member represents the same number of persons as near as may be, except for members apportioned to the county at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the county.

Options (2) and (3) may not be adopted by a board which has adopted option (4) of subsection (c).

(e) The voters may alter the mode of selecting the chairman of the board of county commissioners by adopting one of the following options:

(1) The board shall select a chairman from among its membership to serve at its pleasure;

(2) Chairmanship of the board of commissioners shall be a distinct and separate office with candidates for that office nominated and elected by all of the qualified voters of the county separate and apart from other members of the board.

Option (2) may not be selected by a board which has adopted option (4) of subsection (c). (1927, c. 91, s. 3; 1969, c. 717, s. 1.)

Editor's Note. — Session Laws 1969, c. 717, effective July 1, 1969, repealed former §§ 153-16, which provided that there should be two forms of county government, the County Commissioners Form and the Manager Form, 153-17, defining the County Commissioners Form, 153-18, providing for modifications of regular forms and 153-19, providing the procedure for adopting a modification of the County Commissioners Form, and enacted present §§ 153-16 and 153-17 in their place. The 1969 act also repealed former §§ 153-24, providing for adoption of the Manager Plan by popular vote, and 153-25, providing how often elections to modify the County Commissioners Plan or to adopt the Manager Plan might be held.

Session Laws 1969, c. 717, s. 3, provides: "All public, local and special acts relating to the election of boards of county commissioners shall continue in full force and effect until altered in accordance with the procedures prescribed by this act."

§ 153-17. How change may be made.—(a) The board of commissioners of any county may submit to the qualified voters thereof a resolution altering the composition or mode of election of the board within any of the options set out in G.S. 153-16. If the resolution provides for commissioner districts, it shall define the districts and apportion members among them. If the resolution alters the number of members of a board then serving overlapping four-year terms and makes no change in the term of office, it shall specify how many vacancies shall be filled at each of the next two succeeding general elections and the length of term to be served by the candidates first elected to fill those vacancies, in order that not more than one half of the membership of a board with an even number of members, or not more than a simple majority of a board with an odd number of members, shall be elected at the same general election. Such a resolution shall be adopted not later than 30 days before the deadline for filing notice of candidacy for county offices, and shall be published in full in some newspaper having a general circulation in the county.

(b) A resolution adopted under this section shall be submitted to the qualified voters of the county at the next general election following adoption thereof. The ballot shall be in substantially the following form:

( ) FOR the resolution (briefly describe the change proposed)
( ) AGAINST the resolution (briefly describe the change proposed.)

If a majority of the ballots cast shall be in favor of the resolution, it shall take effect at the next succeeding general election.

(c) The board of commissioners shall cause all resolutions adopted pursuant to this section to be recorded in an ordinance book which shall be separate and distinct from the commissioners' minute book, which book shall be appropriately indexed. The clerk to the board shall file a certified copy of all resolutions adopted pursuant to this section in the office of the Secretary of State within 30 days after approval by the voters. (1927, c. 91, s. 4; 1969, c. 717, s. 1.)

Cross Reference. — See Editor's note under § 153-16.

§§ **153-18, 153-19:** Repealed by Session Laws 1969, c. 717, s. 1, effective July 1, 1969.

Cross Reference. — See Editor's note under § 153-16.

II. Manager Form.

§§ **153-24, 153-25:** Repealed by Session Laws 1969, c. 717, s. 2, effective July 1, 1969.

Cross Reference. — See Editor's note under § 153-16.

IV. Director of Local Government.

§§ **153-29 to 153-32:** Repealed by Session Laws 1971, c. 780, s. 6, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 5.

Clerk to Board of Commissioners.

§ **153-40. Clerk to board.**—The board of commissioners of each county shall, at the first regular meeting in December of each year, appoint a clerk to the board who shall perform the duties prescribed by G.S. 153-41 and such other duties as the board may assign. The board may confer the duties of clerk on the register of deeds or any other county officer or employee. (Const., art. 7, s. 2; Code, s. 710; 1895, c. 135, s. 4; Rev., s. 1324; C. S., s. 1309; 1955, c. 247, s. 1; 1963, c. 372; 1969, c. 207.)

Editor's Note.—

The 1969 amendment rewrote this section.

ARTICLE 6A.

County Officers and Employees.

§ **153-48.1. Commissioners to fix salaries, fees, and number of employees.**—Each board of county commissioners is authorized and empowered to fix:

(1) The number of salaried employees in the office of the sheriff, the register of deeds, and all other county offices and departments;

(2) All salaries, allowances, and other compensation paid to all county officers and employees whether elected or appointed;

(3) All fees and commissions charged by any county officer or employee for the performance of any service or duty permitted or required by law. (1953, c. 1227, ss. 1, 2; 1969, c. 358, s. 1.)

Revision of Article.—Session Laws 1969, c. 358, effective July 1, 1969, repealed the former article, comprising §§ 153-48.1 to 153-48.5, and enacted in its place the present article, containing §§ 153-48.1 to 153-48.3. Where appropriate, the historical citations to the repealed sections have been added to the sections of the new article.

Section 3 of the act revising this article provides: "All special, local and private acts fixing the number, salaries, fees, allowances, and other compensation of county officers and employees shall continue in full force and effect until superseded by action taken in accordance with the provisions of this act."

When Local or Special Act Applicable in Fixing Salaries.—See opinion of Attorney General to Mr. James R. Sugg, Craven County Attorney, 9/2/70.

§ **153-48.2. Limitations on authority.**—The authority conferred by § 153-48.1 shall be subject to the following limitations:

(1) The compensation and allowances of the board of county commissioners shall be determined as provided by G.S. 153-13;

(2) The board of commissioners shall have no authority to fix fees in the General Court of Justice or fees of the register of deeds prescribed by G.S. 161-10;

(3) No salary, allowance, or other compensation being paid to any officer elected by the people shall be reduced prior to the expiration of the then current term of office, unless the officer shall agree to a reduction, or unless a reduction shall be ordered by the Director of Local Government pursuant to General Statutes chapter 159, article 4;

(4) In election years, any action fixing the salary or allowances of an officer to be elected by the people in that year shall be taken at least 14 days before the deadline for filing notice of candidacy for that office by resolution effective for the next succeeding fiscal year, which resolution may not thereafter be altered until the newly elected or incumbent officer is sworn into office; an appropriation for the salary fixed in the resolution shall be included in the annual budget resolution for the fiscal year beginning July 1 of that year; and the filing fee for that office shall be determined by the salary to be effective as of July 1: Provided, that nothing in this paragraph shall exclude elected officers from cost-of-living salary increments given to county officers and employees generally;

(5) Salaries of county employees subject to the State Personnel Act shall be fixed as provided in chapter 126 to the General Statutes;

(6) All salaries, fees, allowances, and other compensation shall be fixed and paid in accordance with the County Fiscal Control Act;

(7) Any action increasing the salaries of employees in any particular office or department by more than 20% as compared with the last preceding

fiscal year may be taken only at the time of adoption of the annual budget resolution, and shall be separately published in some newspaper having a general circulation in the county as provided by G.S. 1-597. (1953, c. 1227, s. 3; 1969, c. 358, s. 1; c. 1017.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, added the proviso at the end of subdivision (4).

County Board of Commissioners Has No Authority to Abolish Office or Reduce Salary of Incumbent Coroner during Term of Office.—See opinion of Attorney General to Mr. Harold Price, Chairman, Alexander County Board of Elections, 2/12/70.

Authority of County to Increase Officers' Salaries in Election Year.—See opinion of Attorney General to Mr. Dallas W. McPherson, Greene County Attorney, 4/20/70.

§ 153-48.3. Special regulations pertaining to the sheriff and register of deeds.—So long as the sheriff or register of deeds shall be elected by the people, the authority conferred by § 153-48.1 shall be subject to the following additional limitations insofar as it applies to the sheriff, the register of deeds, and to deputies, clerks, assistants, or other employees of the sheriff or the register of deeds:

(1) The sheriff and register of deeds shall have the sole and exclusive right to hire, discharge, and supervise all employees in their respective offices, except that appointment by any sheriff or register of deeds of a relative by blood or marriage of closer relationship than first cousin or any person who has been previously convicted of a crime involving moral turpitude, shall be subject to approval by the board of county commissioners;

(2) Each sheriff and register of deeds shall be entitled to at least one deputy to be reasonably compensated by the board of county commissioners;

(3) Any action of the board of county commissioners reducing the salaries or allowances of the employees assigned to the sheriff or register of deeds, except reductions which apply alike to all county offices and departments, shall be subject to the approval of the sheriff or the register of deeds, as the case may be. If the sheriff or the register of deeds shall disapprove any such action by the board of county commissioners, the board shall meet with the officer and attempt to reach agreement. If no agreement can be reached, either party may refer the dispute to arbitration by the senior regular resident superior court judge of the district in which the county lies. The award shall be made within 30 days of the referral and shall extend to no more than two fiscal years, including the fiscal year in which rendered;

(4) No salary being paid a sheriff or register of deeds pursuant to a local act of the General Assembly as of July 1, 1969, shall be reduced so long as the person incumbent on that date shall continue to hold the office he then holds.

All of the limitations of this section, except that contained in subdivision (2), shall also apply to any other elected officers of any county. (1969, c. 358, s. 1.)

Local Modification.—Pasquotank, as to subdivision (4): 1969, c. 210.

§§ 153-48.4, 153-48.5: Repealed by Session Laws 1969, c. 358, s. 1, effective July 1, 1969.

Revision of Article.—See same catchline under § 153-48.1.

Editor's Note. — Section 153-48.5 was amended by Session Laws 1969, c. 295.

ARTICLE 7.

Local Confinement Facilities.

§ 153-49. Legislative intent and purpose.—The General Assembly hereby declares its intent and legislative policy with respect to local jails and other local confinement facilities:

(1) Local confinement facilities should provide secure custody of persons confined therein to assure the protection of the community. Such facilities should be so operated as to protect the "health and comfort" of prisoners as required by the North Carolina Constitution.

(2) Minimum State-wide standards should be provided to guide and assist local government in jail planning, and construction, the maintenance of jail facilities, and the development of jail programs that provide for humane treatment and contribute to the rehabilitation of offenders in the administration of justice.

(3) The State should provide services to local government to help improve the quality of jail administration in the State, including jail inspection, consultation, and technical assistance; and other appropriate services when requested.

(4) Adequate training for jail personnel is essential to improve the quality of jail administration. The State should provide this training and this training should be required as a condition of employment in a local confinement facility. (1967, c. 581, s. 2.)

Revision of Article.—Session Laws 1967, c. 581, s. 2, effective July 1, 1967, rewrote this article, designating the sections therein as §§ 153-49 to 153-53.7. The article formerly consisted of §§ 153-49 to 153-53.

§ 153-49.1: Repealed by Session Laws 1967, c. 581, s. 2.

Revision of Article.—See same catchline in note to § 153-49.

§ 153-50. Definitions.—The following terms or phrases shall be defined as follows in this article unless the context or subject matter otherwise requires:

(1) "Commissioner" means the State Commissioner of Social Services.

(2) "Department" means the State Department of Social Services.

(3) "Governing body" includes the governing body of any unit of county or municipal government which operates a jail or confinement facility, or the governing bodies of any units of local governments operating a district confinement facility.

(4) "Local confinement facility" includes any county or municipal jail, any local lockup, and regional or district jail, any detention facility for children or adults, any county or municipal workhouse or house of correction, and any other confinement facility operated by any local government for confinement of persons awaiting trial or serving sentences.

(5) "Local government" includes any county or municipality which operates a jail or other confinement facility.

(6) "Prisoner" includes any person, adult or juvenile, confined or detained. (1967, c. 581, s. 2; 1969, c. 981, s. 1.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, substituted "State Commissioner of Social Services" for "State Commissioner of Public Welfare" in subdivision (1) and "State Department of Social Services" for "State Department of Public Welfare as defined in G.S. 108-27" in subdivision (2).

§ 153-51. Jail and detention services.—The North Carolina Board of Public Welfare is hereby given the policy responsibility for providing and coordinating State services to local government with respect to local confinement facilities. An organization for jail and detention services is hereby established within the Department under the direction of the Commissioner and shall have the following powers, duties, and responsibilities:

(1) To provide consultation and technical assistance to local governmental officials concerning local confinement facilities;
(2) To visit and inspect local confinement facilities; to advise the jailer, sheriff, county commissioners, and other appropriate officials as to deficiencies and recommendations for improvement; and to submit written reports of such inspections to appropriate officials of local government;
(3) To review and approve plans for the construction or major modification of any local confinement facility;
(4) To develop minimum standards for the construction and operation of local confinement facilities;
(5) To assist the Commissioner in providing for training of personnel of local confinement facilities;
(6) To perform such other duties as may be necessary to carry out the responsibilities of the State related to local confinement facilities as provided by law. (1967, c. 581, s. 2.)

§ **153-52. Minimum standards.**—(a) The Commissioner of Public Welfare shall develop and publish minimum standards for the operation of local confinement facilities. In the development of these minimum standards, the Department shall consult with and seek the advice of the presidents (or their designated representatives) of organizations representing local government and law enforcement, including the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Sheriffs' Association, and the North Carolina Police Executives Association. The Department shall also consult with and seek the advice of the executive heads of appropriate State departments (or their designated representatives), including the Prison Department, the State Board of Health, the Department of Mental Health, and the Insurance Department. These minimum standards shall be approved by the State Board of Public Welfare and shall be effective only upon approval by the Governor. These minimum standards shall become effective not later than January 1, 1969, and shall have the force and effect of law.

(b) These minimum standards shall be developed with a view to providing secure custody of prisoners, and to protecting their health, comfort, and welfare. Minimum standards shall include the following:

(1) Physical facilities which are secure and safe;
(2) Jail design;
(3) Adequacy of space per prisoner;
(4) Heat, light and ventilation;
(5) Supervision of prisoners;
(6) Personal hygiene and comfort of prisoners;
(7) Medical care for prisoners;
(8) Sanitation;
(9) Food allowances, food preparation, and food handling;
(10) Such other provisions as may be necessary for the safekeeping, privacy, care, protection, and welfare of prisoners. (1967, c. 581, s. 2.)

§ **153-53. Inspection of local confinement facilities.** — Personnel of the Department shall visit and inspect each local confinement facility at least semi-annually for the purpose of looking into the conditions of confinement and treatment of prisoners, and determining whether such facilities meet the minimum standards published under G S. 153-52. A written report of each inspection shall be made within 30 days after the inspection to the governing body and other officials of local government responsible for the local confinement facility. This report shall specify those respects in which the local confinement facility does not meet the required minimum standards. After receipt of this report, the governing body shall consider the report at its next regular public meeting, and shall initiate the necessary corrective action in any case where the local confinement facility does not meet specified minimum standards. (1947, c. 915; 1967, c. 581, s. 2.)

§ 153-53.1. Enforcement of minimum standards. — If an inspection under G.S. 153-53 discloses that a local confinement facility does not meet the minimum standards established under G.S. 153-52, and if the Commissioner considers that the conditions in such local confinement facility jeopardize the safe custody, safety, health, or welfare of prisoners confined therein:

(1) He shall so notify the governing body and other officials of the local government unit responsible for the local confinement facility. A copy of this notice, together with a copy of the written report of the inspection required under G.S. 153-53, shall also be sent to the senior regular resident superior court judge for the district in which the local confinement facility is located. The governing body shall call a special public meeting to consider this report, and the inspectional personnel shall appear at this public meeting to advise and consult with the governing body concerning appropriate corrective action.

(2) The governing body shall initiate appropriate corrective action within 30 days or may voluntarily close the local confinement facility. Such corrective action shall be completed within a reasonable period of time.

(3) If the governing body fails to initiate corrective action within 30 days after receipt of the report of inspection, or fails to correct the disclosed conditions within a reasonable period of time, the Commissioner of Public Welfare may order that the local confinement facility be closed. The governing body, the senior regular resident superior court judge, and other responsible local officials shall be notified by registered mail of the Commissioner's order closing a local confinement facility. Such an order shall be effective immediately.

(4) A governing body shall have the right to appeal to the senior regular resident superior court judge from an order of the Commissioner which requires that a local confinement facility be closed. Notice of intention to appeal shall be given by registered mail to the Commissioner and to the senior regular resident superior court judge within 15 days after receipt of the Commissioner's order. The right of appeal shall be deemed waived if notice is not given as herein provided.

(5) The appeal hearing shall be before the senior regular resident superior court judge who shall cause proper and sufficient notice of the date, time, and place of the appeal hearing to be given to all interested parties, including the Commissioner, the governing body, and other local officials. The hearing shall be conducted by the judge without a jury, consistent with principles of due process of law and fundamental fairness. The Commissioner and members of the Department, members of the governing body, and other responsible local officials, shall have a right to be present at the appeal hearing to present evidence which the court deems appropriate. The issue shall be whether the local confinement facility met the required minimum standards on the date of the last inspection. The court may affirm, reverse, or modify the Commissioner's order. (1947, c. 915; 1967, c. 581, s. 2.)

§ 153-53.2. Supervision of local confinement facilities.—(a) It shall be unlawful for prisoners to be confined in a local confinement facility unless personnel are present and available to provide continuous supervision so that custody will be secure and so that the prisoners can be protected in case of emergencies, such as fire, illness, assaults by other prisoners, or other emergencies. The personnel responsible for supervision of local confinement facilities shall have a legal duty to supervise prisoners closely enough to maintain safe custody and control and to be informed of their general health and emergency medical needs at all times.

(b) In case of medical emergency, such supervisory personnel shall secure emergency medical care from a licensed physician according to the plan for medical care provided by the governing body under G.S. 153-53.3. If the physician designated by the medical plan of the governing body is not available, such personnel shall secure medical services through any licensed physician who is available. The cost of such medical services shall be paid by the unit of local government operating the local confinement facility.

(c) Violation of the provisions of this section shall be a general misdemeanor, punishable according to law. (1967, c. 581, s. 2.)

§ 153-53.3. Medical care of prisoners.—(a) The governing body of any unit of local government which operates a local confinement facility shall develop a plan for providing medical care for prisoners in its confinement facility. This plan shall be developed in consultation with and upon the advice of appropriate local officials or organizations, including the sheriff, the county or municipal physician, the local or district health director, and the local medical society. This plan shall be designated to protect the health and welfare of prisoners and to avoid the spread of contagious disease. This plan shall include provisions for the services of a licensed physician specifically responsible for the medical services for prisoners required by law under G.S. 130-97 and G.S. 130-121 and shall include compensation by the governing body for such services. This plan shall further provide for medical supervision of prisoners and emergency medical care for prisoners which are deemed necessary for their health and welfare. This medical plan shall be subject to the approval of the local or district health director, who shall determine whether the plan is adequate to protect the health and welfare of the prisoners confined in the local confinement facility.

(b) In case a prisoner dies in any local confinement facility, the medical examiner and coroner shall be notified immediately and a report of the death in writing shall be made to the local or district health director and to the Commissioner within five days of the death. This report shall be made by the jailer or other personnel supervising the local confinement facility on the proper form of the State Board of Health for reporting a death in a local confinement facility. The State Board of Health shall develop and distribute a proper form for reporting a death in a local confinement facility.

(c) Any violation of the provisions of this section, or any violation of the provisions of G.S. 130-97 and G.S. 130-121, shall be a general misdemeanor, punishable according to law. (1967, c. 581, s. 2.)

Duty of County to Pay for Hospitalization of Prisoner in County Jail. — See opinion of Attorney General to Mr. Charles W. Ogletree, Tyrrell County Attorney, 1/9/70.

§ 153-53.4. Sanitation and food.—(a) The State Board of Health shall adopt rules and regulations governing the sanitation of local confinement facilities, including kitchens, or other places where food is prepared for prisoners. These rules and regulations shall cover such matters as cleanliness of floors, walls, ceilings, storage spaces, utensils and other facilities; adequacy of lighting, ventilation, water, lavatory facilities, bedding, food protection facilities, treatment of eating and drinking utensils, and waste disposal; methods of food preparation, handling, storage, and serving; adequacy of diet; and such other items as are necessary in the interest of the health of the prisoners and the public.

(b) The State Board of Health shall also prepare a score sheet to be used by sanitarians of local or district health departments, who shall inspect local confinement facilities as often as required by the rules and regulations of the State Board of Health. Any findings of inspectional personnel of the State Department of Public Welfare which reflect hazards or deficiencies in the sanitation or food service of a local confinement facility shall be reported immediately to the local or district health department, which shall cause a prompt inspection to be made by a sanitarian. Reports of such inspections shall be forwarded to the Department of Public Welfare, and to the governing body, on forms to be developed by the State Board of Health. Such reports shall indicate whether the local confinement facility and its kitchen is approved or disapproved for public health purposes. If a local confinement facility or its kitchen is disapproved for public health purposes, the Commissioner shall have authority to order that the local confinement facility or the kitchen or both be closed as provided in G.S. 153-53.1 (3). (1967, c. 581, s. 2.)

§ **153-53.5. Training of personnel.**—(a) The Commissioner shall provide for a program of training for personnel responsible for the supervision and administration of local confinement facilities, including sheriff and other elected or appointed officials. Training shall be developed upon the advice of and in consultation with the State Prison Department, North Carolina Sheriffs' Association, North Carolina Association of County Commissioners, North Carolina League of Municipalities and North Carolina Police Executives Association. Training shall be provided to the degree possible through existing educational resources in the State.

(b) No person or elected official shall serve as jailer or supervise or administer a local confinement facility unless he has successfully completed an approved program of training under (a) above, except on a temporary or probationary basis. No person shall serve on a temporary or probationary basis for more than one year (1967, c. 581, s. 2.)

§ **153-53.6. Separation of sexes.**—Male and female prisoners shall be confined in separate facilities or in separate quarters in local confinement facilities. (1967, c. 581, s. 2.)

§ **153-53.7. District confinement facilities.**—(a) Any two or more units of local government (county or municipal) may agree to jointly construct, finance, and operate a district confinement facility or jail. Such an agreement shall be in writing and shall specify how construction and maintenance cost and administrative responsibilities will be divided between units of local government. The governing bodies shall designate a jail administrator for such a district jail. Such administrator need not be the sheriff or other official of any of the participating units of local government. Any two or more units of local government may also designate an existing jail or local confinement facility as a district confinement facility under terms agreed upon in writing by the participating governing bodies. If a district confinement facility is established, the governing bodies of the participating units of local government may dispose of their separate jails or confinement facilities upon such terms as the governing bodies may decide. The Department shall provide technical and other assistance to local units of government in developing district confinement facilities.

(b) Any two or more units of local government (county or municipal) may enter into service contracts with one another whereby one such unit may own and operate a local confinement facility or jail and the other unit or units may use such facility for the confinement of any or all persons that such unit or units may lawfully confine. Terms and conditions for such service contracts shall be those which the governing bodies of the contracting units may deem to be proper.

(c) When two or more units of local government have entered into an agreement to construct, finance and operate a regional or district confinement facility or jail, the respective governing bodies of the participating units of local government shall levy sufficient taxes, or issue general obligation bonds or notes, to carry out the terms of the agreement.

(d) The jailer or custodial personnel of the regional or district confinement facility shall have the authority of a law-enforcement officer for the purpose of receiving and keeping custody of prisoners received from the participating units of local government. Law-enforcement officers of the participating units of government are authorized to transport prisoners to and from the local confinement facility and each unit shall be responsible for the transportation of its prisoners. (1933, c. 201; 1967, c. 581, s. 2; 1969, c. 743; 1971, c. 341, s. 1.)

Local Modification. — Camden, Pasquotank, and Perquimans: 1971, c. 341, s. 2.

Editor's Note. — The 1969 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

The 1971 amendment added subsections (c) and (d).

ARTICLE 7A.

Joint County-Municipal Buildings.

§ **153-54. Joint construction or acquisition.** — Notwithstanding any limitation provided by any general, public-local or private law, the governing bodies of any county and municipality in such county are hereby authorized and empowered jointly to construct or acquire public buildings for housing offices, departments, bureaus and agencies of the county government and the government of the municipality, including space and facilities for courts, libraries, auditoria, coliseums or other similar facilities, and to acquire necessary land and equipment therefor, provided that the land upon which the buildings are to be constructed or the buildings which are to be acquired for such purpose are located in the municipality which is acting jointly with the county; and provided further that such buildings may be constructed upon land owned by the county or municipality as hereinafter provided. (1965, c. 682, s. 1.)

Editor's Note. — Section 1a of c. 682, Session Laws 1965, provides that this article shall not apply to Lenoir County.

Former § 153-54, which pertained to prison bounds, was repealed by Session Laws 1957, c. 1373.

Former §§ 153-55 to 153-58, which pertained to county revenues, were repealed by Session Laws 1953 c. 973, s. 3.

§ **153-55. Procedure; contracts.**—The governing bodies of such county and municipality shall determine in joint or separate sessions, the location of the buildings, the general dimensions and specifications, the uses which the county and the municipality shall each make of the joint buildings, the apportionment to each of a share of the cost of the buildings, the cost of any necessary land and equipment, and the cost of maintenance and operation thereof, and all other necessary details, and such county and municipality shall enter into such contracts or agreements with each other as they may deem necessary with respect to such determinations The title to any land so acquired, together with the buildings thereon and any such buildings to be constructed thereon for the purpose provided in this article, shall be vested in the county and the municipality in the manner determined by any such contract or agreement. In the event that the land is owned by either the county or the municipality at the time of the execution of the contract or agreement, such contract or agreement may provide for payment to such county or municipality of the cost of the other's share of such land. (1965, c. 682, s. 1.)

Cross Reference.—See Editor's note to § 153-54.

§ **153-56. Issuance of bonds for construction or acquisition.**—For its share of financing the cost of acquiring or constructing such buildings including the acquisition of necessary land and equipment therefor, the county may issue general obligation bonds or notes as authorized by the County Finance Act, the same being article 9 of chapter 153 of the General Statutes, and for its share of financing such cost the municipality may issue general obligation bonds or notes as authorized by the Municipal Finance Act, the same being subchapter III of chapter 160 of the General Statutes, and the special approval of the General Assembly is hereby given for the issuance of bonds or notes for such special purposes (1965, c. 682, s. 1.)

Cross Reference.—See Editor's note to § 153-54.

§ **153-57. Conveyances prohibited except by joint action; exception.** —No land or buildings acquired or constructed as herein provided shall be sold, encumbered, conveyed or otherwise disposed of except by joint action of the county and the municipality; provided however, that the county or the municipality may purchase the interest of the other upon such terms as may mutually be agreed upon. (1965, c. 682, s. 1.)

Cross Reference.—See Editor's note to § 153-54.

§ **153-58. Powers in addition and supplementary to existing powers.** —The powers granted by this article are in addition to and not in substitution for existing powers of counties and municipalities to construct, acquire and finance the cost of public buildings, individually or acting jointly with each other. (1965, c. 682, s. 1.)

Cross Reference.—See Editor's note to § 153-54.

ARTICLE 8.

County Revenue.

§ **153-64. Demand before suit against municipality; complaint.**

Not Applicable to Suit for Tort.—Section 1-53 and this section do not require the filing of a claim with the city before suit may be brought for damages for a tort committed by the city in a proprietary activity. Bowling v. City of Oxford, 267 N.C. 552, 148 S.E.2d 624 (1966).

§ **153-64.1. Annual tax to meet costs of revaluation of real property.** —The board of county commissioners, to meet the costs of revaluation of real property as required by G.S. 105-286, shall annually levy a tax on taxable property in the county the proceeds of which, when added to other available funds, is calculated to produce, by accumulation during the period between required revaluations, sufficient funds to pay for revaluation of real property by actual visitation and appraisal as required by G.S. 105-286 and G.S. 105-317. All funds raised and set aside for this purpose from such special levy or from other sources shall be placed in a sinking fund or otherwise earmarked and shall not be available or expended for any other purpose. Any unexpended balance remaining in said fund following a required revaluation shall be retained in said fund for use in financing the next periodic revaluation of real property by actual appraisal under the provisions of G.S. 105-286 and G.S. 105-317. The levy herein authorized is hereby declared to be for a necessary expense and for a special purpose. (1959, c. 704, s. 6; 1971, c. 806, s. 4; c. 931, s. 2.)

Editor's Note.—The first 1971 amendment, effective July 1, 1971, substituted "105-296" for "105-278" in three places and "105-317" for "105-295" in two places in this section.

The second 1971 amendment, effective July 1, 1971, substituted "G.S. 105-286" for "G.S. 105-296" throughout this section.

ARTICLE 9.

County Finance Act.

§§ **153-69 to 153-73:** Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-74. Notes evidencing revenue anticipation loans. — Negotiable notes shall be issued for all moneys borrowed under the two preceding sections [§§ 153-72, 153-73], which notes may be renewed from time to time and money may be borrowed upon new notes from time to time for the payment of any indebtedness evidenced thereby; but all such notes and loans shall mature within the time limited by said two sections for the payment of the original loan. All notes herein provided for shall be authorized by a resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix such face amount and rate of interest within the limitations prescribed by such resolution, and the power to dispose of such notes, which shall be executed under the seal of the county by the chairman and clerk of the board, or by any two officers designated by the board for that purpose, and any interest coupons thereto attached shall be signed with the manual or facsimile signature of said clerk or of any other officer designated by the board for that purpose. The resolution authorizing issuance of notes for money borrowed under § 153-73 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1927, c. 81, s. 6; 1931, c. 60, s. 59; 1939, c. 231, s. 2(b); 1969, c. 687, s. 1.)

Editor's Note.—

The 1969 amendment deleted the former second sentence, which provided that no money should be borrowed at a rate of interest exceeding the maximum rate permitted by law.

Repeal of Section.—This section is repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

§§ 153-75, 153-76: Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-77. Purposes for which bonds may be issued and taxes levied.

(21) To provide for the acquisition, construction, reconstruction, extension, improvement or enlargement of groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements which are designed for the control of beach erosion or for protection from flood and hurricanes or for the preservation or restoration of facilities and natural features which afford protection to the beaches and other land areas of the county and to the life and property thereon. The authority granted in this subdivision shall apply only to those counties which are in whole or in part bounded by the Atlantic Ocean.

(22) Construction, reconstruction, installation, extension, alteration and improvement of watershed improvement works or projects installed or operated, or to be installed or operated, by a county under article 3 of General Statutes chapter 139 or any local act granting similar powers, including without limitation the acquisition of real and personal property, easements, options, or other interests in real property therefor.

(23) Acquisition and preparation of land for use in the sanitary land fill method for disposal of garbage, refuse, and other waste, said fills to be accomplished by the county acting either singly or jointly in cooperation with one or more political subdivisions or governmental agencies, and said fills to be available for public purposes of the county when completed.

(24) Acquisition of vehicles, equipment, apparatus, or furnishings not included in other subdivisions of this section, for use in any department of the county. (1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, s. 54; 1933, c. 259, s. 2; 1935, c. 302, s. 2; 1939, c. 231, s. 2(c); 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1.)

Editor's Note.—

The 1965 amendment added subdivision (21).

Session Laws 1967, c. 987, added subdivision (22). The amendatory act provides in part: "Sec. 11. Nothing contained in this act shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State.

"Sec. 12. The authority granted hereinabove is supplemental and additional to any other authority granted by law relating to watershed improvement programs, whether by general or special law."

Session Laws 1967, c. 1001 added subdivisions (23) and (24).

As the rest of the section was not changed by the amendments, only subdivisions (21), (22), (23) and (24) are set out.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

§§ 153-78, 153-79: Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-80. Maturities of bonds.

(5) Land, including grading and drainage, buildings, equipment and other improvements for airports or landing fields, thirty years.

(6): Repealed by Session Laws 1967, c. 1086, s. 2.

(9) County watershed improvement works or projects, and acquisition of land or interests in land therefor, 40 years.

(10) Land for sanitary land fills, including site preparation, 20 years.

(11) Vehicles, equipment, apparatus, or furnishings not included in other subdivisions of this section, 10 years.

(12) Groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements which are designed for the control of beach erosion or for protection from flood and hurricanes or for the preservation or restoration of facilities and natural features, forty (40) years. (1927, c. 81, s. 11; 1929, c. 171, s. 2; 1931, c. 60, s. 56; 1933, c. 259, s. 2; 1953, c. 1065, s. 1; 1957, c. 266, s. 2; 1967, c. 987, s. 3; c. 1001, s. 2; c. 1086, ss. 1, 2; 1969, c. 475.)

Cross Reference.—

See Editor's note to § 153-77.

Editor's Note.—

The first 1967 amendment added subdivision (9).

The second 1967 amendment added subdivisions (10) and (11).

The third 1967 amendment rewrote subdivision (5) and repealed subdivision (6). Section 6 of c. 1086, Session Laws 1967, provides that the act shall also apply to bonds authorized but not issued at the effective date of the act, which became effective upon its ratification, July 3, 1967.

The 1969 amendment added subdivision (12).

Only the subdivisions affected by the amendments are set out.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

§ **153-81:** Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **153-82. Consolidated bond issues.**—In the event bonds authorized by any one order under the provisions of G.S. 153-78 shall be for improvements with different estimated periods of life under the provisions of G.S. 153-80, such bonds shall mature within the average of such periods, taking into consideration the amount of bonds estimated to be required to be issued as to each such improvement. It shall be lawful to consolidate into one issue bonds authorized by two or more orders for different purposes, in which event the bonds of such consolidated issue shall mature within the average of the periods estimated as the life of the several improvements, taking into consideration the amount of bonds to be issued on account of each item for which a period shall be estimated. The determination of any such period under the provisions of this section shall be conclusive. (1927, c. 81, s. 12; 1967, c. 1086, s. 3.)

Editor's Note. — The 1967 amendment made the former provisions of this section the present second sentence and added the present first and third sentences. Section 6 of the amendatory act provides that the act shall also apply to bonds authorized but not issued at the effective date of the act, which became effective upon ratification, July 3, 1967.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

§§ **153-83 to 153-101:** Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **153-102. Within what time bonds issued.**—After a bond order takes effect, bonds may be issued in conformity with its provisions at any time within five years after the order takes effect, unless the order shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of repeal), unless notes issued in anticipation of the proceeds of the bonds shall be outstanding: Provided, that the provisions of this paragraph shall apply to all bonds authorized by any bond order taking effect on or after July 1st, 1952. Provided further that where the issuance of bonds is prevented or prohibited by any injunction, restraining order or any other court proceeding or action at law or equity, and said injunction, restraining order, proceedings or actions are dismissed, then the period of time in which such bonds may be issued shall be extended by adding the period of time involved in the litigation to the five-year period of time fixed by this section.

Notwithstanding the foregoing limitations of time which might otherwise prevent the issuance of bonds, bonds authorized by an order which took effect prior to July 1st, 1952, and which have not been issued by July 1st, 1955, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1957, unless such order shall have been repealed, and any loans made under authority of § 153-108 of this article in anticipation of the receipt of the proceeds of the sale of such bonds, or any renewals thereof, may be paid on or at any time prior to but not later than June 30th, 1957, notwithstanding the limitation of time for payment of such loans as contained in said section. (1927, c. 81, s. 32; 1939, c. 231, s. 2(d); 1947, c. 510, s. 1; 1949, c. 190, s. 1; 1951, c. 439, s. 1; 1953, c. 693, s. 1; 1955, c. 704, s. 1; 1969, c. 99.)

Local Modification.—Anson: 1971, c. 770, amending 1927, c. 81, s. 32.

Editor's Note.—

The 1969 amendment added the second proviso in the first paragraph.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

§ 153-103: Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-104. Interest; medium and place of payment.—The bonds may bear interest at such rate or rates, payable semiannually or otherwise, and may be made payable in such kind of money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide. (1927, c. 81, s. 34; 1969, c. 687, s. 2.)

Editor's Note. — The 1969 amendment inserted "may bear interest at such rate or rates, payable semiannually or otherwise, and."

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

§§ 153-105 to 153-107: Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-108. Bond anticipation loans.—At any time after a bond order has taken effect, as provided in § 153-78, a county may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipts of the proceeds of the sale of bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than five years after the time of taking effect of the order authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, at or before the actual retirement of any such loans by any means other than the issuance of bonds under the bond order upon which such loans are predicated, shall amend or repeal such order so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing order shall take effect upon its passage, and need not be published. Negotiable notes shall be issued for all moneys so borrowed. Such notes may be renewed from time to time, and money may be borrowed upon notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature within the time limited by this section for the payment of the original loan. The said notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount and rate of interest with the limitations prescribed by said resolution, and the power to dispose of said notes. All such notes shall be executed in the manner provided in § 153-105 for the execution of bonds. They shall be submitted to and approved by the attorney for the county before they are issued, and his written approval endorsed on the notes. (1927, c. 81, s. 39; 1953, c. 693, s. 2; 1969, c. 687, s. 3.)

Editor's Note.—

The 1969 amendment deleted the former seventh sentence, which provided that no money should be borrowed under this section at a rate of interest exceeding the maximum rate permitted by law.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

§§ **153-109 to 153-113:** Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 10.

County Fiscal Control.

§§ **153-114 to 153-117:** Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **153-118. Budget estimate.**—Upon receipt of such statements and estimates, the county accountant shall prepare (i) his estimate of the amounts necessary to be appropriated for the budget year for the various offices, departments, institutions, and agencies of the county and its subdivisions, listing the same under the appropriate funds maintained as required by § 153-114, which estimate shall include the full amount of all debt service which the county accountant through the exercise of due diligence determines will be due and payable in the budget year, and also shall include the full amount of any deficit in any fund, and may include a contingency estimate for each fund to meet expenditures for which need develops subsequent to the passage of the budget resolution, and (ii) an itemized estimate of the revenue to be available during the budget year, separating revenue from taxation from revenue from other sources and classifying the same under the appropriate funds maintained as required by § 153-114, and (iii) an estimate of the amount of surplus in each fund as of the beginning of the budget year which he recommends be appropriated to meet expenditures for the budget year. These estimates shall be broken down into as much detail and have appended thereto such information as the board of county commissioners may direct and otherwise to take such form as the county accountant may determine. The estimates of revenue when added to the surplus figure for each fund shall equal the estimates of appropriations for the fund. The county accountant shall also include with such estimates a statement of the rate of tax which will have to be levied in each fund in order to raise the amount of revenue from taxation included in the estimate of revenue: Provided, that the county accountant shall indicate clearly in such statement the percentage of taxes levied which he estimates will be collected in the budget year and on which he has based the rate of tax necessary to raise the amount of revenue from taxation included in the estimate of revenue. Such estimates and statements of the county accountant shall be termed the "budget estimate," and shall be submitted to the board not later than the first regular meeting in July of each year: Provided, that the budget estimate may be submitted to the board on such earlier date as the county accountant, with the approval of the board, may determine. The county accountant may submit a budget message with the budget estimate which may contain an outline of the proposed financial policies of the county for the budget year, may describe in connection therewith the important features of the budget plan, may set forth the reasons for stated changes from the previous year in appropriation and revenue items, and may explain any major changes in financial policy. (1927, c. 146, s. 6; 1955, c. 724; 1969, c. 976, s. 1.)

Local Modification.—By virtue of Session Laws 1965, c. 242, Mecklenburg should be stricken from the replacement volume.

Editor's Note. — The 1969 amendment substituted "first regular meeting in July" for "first Monday of July" in the next-to-last sentence.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

§ 153-119: Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-120. Budget resolution.—It shall be the duty of the board of county commissioners, at least twenty days subsequent to the publication of the statement required by § 153-119 but not later than the first regular meeting in August in each year, to adopt and record on its minutes a budget resolution, the form of which shall be prescribed by the county accountant. The budget resolution shall, on the basis of the estimates and statements submitted by the county accountant, make appropriations for the several offices, departments, institutions, and agencies of the county and its subdivisions, and the budget resolution shall provide for the financing of the appropriations so made. The appropriations shall be made in such sums as the board may deem sufficient and proper, whether greater or less than the recommendations of the budget estimate, and the appropriation or appropriations for each office, department, institution, or agency shall be made in such detail as the board deems advisable: Provided, however, that (i) no appropriation recommended by the county accountant for debt service shall be reduced, and (ii) the board shall appropriate the full amount of all lawful deficits reported in the budget estimate, and (iii) no contingency appropriation shall be included in any fund in excess of five percent (5%) of the total of the other appropriations in the fund: Provided, that before any or all of such contingency appropriation be expended, the board must by resolution authorize the expenditure, and (iv) no appropriations shall be made which will necessitate the levy of a tax in excess of any constitutional or statutory limits of taxation, and (v) the total of all appropriations in each fund shall not be in excess of the estimated revenues and surplus available to that fund. The revenue portion of the budget resolution shall include the following:

(1) A statement of the revenue estimated to be received in the budget year in each fund maintained as required by § 153-114, separating revenues from taxes to be levied for the budget year from revenues from other sources and including such amount of the surplus of each fund on hand or estimated to be on hand at the beginning of the budget year as the board deems advisable to appropriate to meet expenditures of such fund for the budget year; and

(2) The levy of such rate of tax for each fund in the budget year as will be necessary to produce the sum appropriated less the estimates of revenue from sources other than taxation and less that part of the surplus of the fund which is proposed to be appropriated to meet expenditures in the budget year.

In determining the rate of tax necessary to produce such sums, the board shall decide what portion of the levy is likely to be collected and available to finance appropriations and shall make the levy accordingly; and further the board shall not estimate the revenue from any source other than the property tax in an amount in excess of the amount received or estimated to be received in the year preceding the budget year unless it shall determine that the facts warrant the expectation that such excess amount will actually be realized in cash during the budget year. (1927, c. 146, s. 8; 1955, c. 724; 1969, c. 976, s. 2.)

Local Modification.—By virtue of Session Laws 1965, c. 242, Mecklenburg should be stricken from the replacement volume.

Editor's Note. — The 1969 amendment substituted "first regular meeting in August" for "twenty-eighth day of July" near the beginning of the section.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

Need to Fix Sufficient Tax Rate Requires Board of Equalization to Act within Fixed Time.—The reason why the board of equalization is required to act within a fixed time is apparent. The taxing authority must know the value of the taxable property before it can fix a rate sufficient to meet governmental needs. This rate must be fixed prior to September. Spiers v. Davenport, 263 N.C. 56, 138 S.E.2d 762 (1964).

§ **153-121**: Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **153-123**: Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§§ **153-125 to 153-128**: Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§§ **153-130 to 153-135**: Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **153-135.1. Investment of funds.**—The cash balances, or parts thereof, of county funds may be deposited at interest or invested as provided by G.S. 159-28.1. (1967, c. 798, s. 2.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

§§ **153-136 to 153-142**: Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 10A.

Capital Reserve Funds.

§ **153-142.1. Short title.**—This article shall be known and may be cited as "The County Capital Reserve Act." (1943, c. 593, s. 1; 1967, c. 1189.)

Revision of Article.—Session Laws 1967, c. 1189, rewrote this article. The article formerly consisted of §§ 153-142.1 to 153-142.21 and derived from Session Laws 1943, c. 593, ss. 1-20, as amended by Session Laws 1945, c. 464, s. 2; 1949, c. 196, ss. 1-3; 1961, c. 430.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

Without the establishment of a capital reserve fund, the requirements of this Article never come into play. Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

§ **153-142.2. Powers conferred.** — In addition to all other funds now authorized by law, a county is hereby authorized and empowered to establish and maintain a capital reserve fund in the manner hereinafter provided. (1943, c. 593, s. 3; 1967, c. 1189.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

§ 153-142.3. Establishment of fund.—When the governing body of a county elects to establish a capital reserve fund, it shall adopt a resolution creating the fund. In such resolution, the governing body shall state (i) the purposes for which the fund is created, which may be for any purposes for which counties may issue bonds, (ii) the approximate periods of time during which moneys are to be accumulated for each purpose, (iii) the approximaate amounts to be accumulated for each purpose, and (iv) the sources from which moneys for each purpose will be derived. Such resolution shall become effective 10 days after it is filed with the Director of Local Government, the date to be evidenced by the Director's receipt. (1943, c. 593, s. 5; 1967, c. 1189.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

Cited in Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

§ 153-142.4. Amendments.—The resolution may be amended from time to time in the same manner in which it was adopted and made effective. Such amendments may, among other provisions, authorize the use of moneys accumulated or to be accumulated in the fund for any purposes for which the county may issue bonds, whether or not the moneys were originally accumulated for the newly authorized purposes. (1943, c. 593, s. 7; 1967, c. 1189.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

§ 153-142.5. Capital reserve accounts.—In lieu of establishment of a separate capital reserve fund, the board of commissioners may establish a capital reserve account or group of accounts in one or more existing funds, and the provisions of this article shall apply to each such account or group of accounts. (1967, c. 1189.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

§ 153-142.6. Funding.—The capital reserve fund may be funded by transfer of moneys or investment securities from a capital reserve appropriation in the general fund, by the transfer of moneys or investment securities from special purpose tax funds or funds for which taxes for nonnecessary expenses approved by the voters have been levied. When moneys or investment securities, the use of which is restricted by law, come into the capital reserve fund, the identity of such moneys or investment securities shall be maintained by appropriate accounting entries. (1943, c. 593, s. 4; 1945, c. 464, s. 2; 1967, c. 1189.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

§ 153-142.6½: Repealed by Session Laws 1967, c. 1189.

Revision of Article.—See same catchline in note to § 153-142.1.

§ 153-142.7. Investment.—The cash balances, in whole or in part, of the capital reserve fund may be deposited at interest or invested as provided by G.S. 159-28.1, as the same may be amended from time to time. (1967, c. 1189.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

§ 153-142.8. Withdrawals. — Withdrawals from a capital reserve fund established pursuant to this article may be authorized by resolution of the board of county commissioners, which shall become effective 10 days after it is filed with the Director of Local Government, the date of such filing to be evidenced by the Director's receipt. No withdrawal shall be authorized for any purpose other than that specified in the resolution establishing the fund or in a resolution amending same. The withdrawal resolution may authorize the disbursement of moneys from the capital reserve fund under the provisions of the County Fiscal Control Act or the resolution may authorize the transfer of moneys or investment securities to other funds through which the purposes of the capital reserve fund may be accomplished. No withdrawal may be made which would require the expenditure or transfer of moneys or investment securities for purposes for which an adequate balance of eligible moneys or investment securities is not then available in the capital reserve fund. (1943, c. 593, ss. 11, 16; 1945, c. 464, s. 2; 1949, c. 196, s. 3; 1967, c. 1189.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

Cited in Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

§ **153-142.9. Authority supplemental.** — The authority granted hereinabove is supplemental and additional to any other authority granted by law relating to capital reserve funds, whether general or special. Nothing contained in this article is intended, nor shall be construed, to apply to capital reserve funds established under article 10B, chapter 153, or §§ 115-80.1 through 115-80.5 of the General Statutes. (1967, c. 1189.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

§§ **153-142.10 to 153-142.21:** Repealed by Session Laws 1967, c. 1189.

Revision of Article.—See same catchline in note to § 153-142.1.

ARTICLE 10B.

Capital Public Health and Mental Health Center Reserve Funds.

§ **153-142.22. Establishment and purpose of reserve fund; depositary.** — (a) A capital outlay budget of any public health and/or mental health administrative unit within the county may contain an amount to be appropriated for payment into a special fund which shall be designated, "Capital Public Health and Mental Health Center Reserve Fund," hereinafter referred to as "the reserve fund" Such amount, together with similar amounts which may be contained in subsequent capital outlay budgets of any such public health and mental health administrative units, shall be for the purpose of anticipating future needs for public health and/or mental health center capital outlay and for financing all or a part of the cost thereof: Provided, withdrawals from the reserve fund, as hereinafter provided, for the cost of/or needs in a particular public health and/or mental health administrative unit shall be limited to the amount or the aggregate amounts contained in the approved capital outlay budget or budgets of the particular unit, together with a proportionate share of the net earnings from investment of the reserve fund.

(b) Upon approval of a capital outlay budget by the board of county commissioners, which budget contains such amounts so appropriated, the reserve fund shall be deemed to have been duly established. The reserve fund shall be maintained as a separate account from all other funds, and payments thereto or deposits therein shall be in such bank or trust company as the board of county commissioners may designate as depositary thereof. The board shall promptly designate such depositary upon establishment of the reserve fund, and all such deposits shall be secured as provided by G.S. 159-28 of the Local Government Act. (1965, c. 963, s. 1.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 5, effective July 1, 1973.

§ 153-142.23. Withdrawals from reserve fund.—Each withdrawal from the reserve fund shall be authorized by order passed by the board of county commissioners and upon petition therefor as hereinafter provided. The board of health and/or the mental health authority in the county may petition for a withdrawal, which petition shall be by resolution duly adopted by said board of health and/or mental health authority, and a certified copy of such resolution shall be transmitted to the board of county commissioners. The resolution shall set forth:

(1) A request to the board of county commissioners for the withdrawal;
(2) The amount of such withdrawal;
(3) A brief description of the needs and the name or location of the public health center and/or mental health center where such needs exist;
(4) A statement that the withdrawal is for the purpose of financing the cost of such needs either together with other funds available for the same, specifying their amounts and source, or that there are no other funds available therefor, as the case may be; and
(5) A declaration that the fulfillment of such needs is necessary for the maintenance of the public health center and/or mental health center as required by the Constitution and laws of North Carolina.

Upon receipt of the petition by the board of county commissioners, said board of commissioners may, in its discretion, pass an order authorizing the withdrawal either in conformity with the petition or with modification thereof or may decline to pass such order: Provided, said board of county commissioners shall not pass an order authorizing withdrawal of an amount in excess of the amount set forth in the petition or in excess of the amount in the reserve fund to the credit of the administrative unit requesting withdrawal. Each withdrawal so authorized shall be by check drawn on the depositary for the amount equal to the amount so authorized, which check shall be signed by the chairman of the board of county commissioners and by the county accountant and shall be deposited for disbursement in the same manner as other capital outlay funds are disbursed. (1965, c. 963, s. 2.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 5, effective July 1, 1973.

§ 153-142.24. Investment of moneys in reserve fund.—The cash balance, or parts thereof, of the capital reserve fund may be deposited at interest or invested as provided by G.S. 159-28.1. (1965, c. 963, s. 3; 1967, c. 798, s. 2.)

Editor's Note. — The 1967 amendment rewrote this section.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 5, effective July 1, 1973.

§ 153-142.25. Unlawful withdrawal or expenditure of reserve fund.—It shall be unlawful to withdraw or expend, or to cause to be withdrawn or expended, all or any part of the capital reserve fund except as authorized by this article. (1965, c. 963, s. 4.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 5, effective July 1, 1973.

§ 153-142.26. Accounting for reserve fund.—The county accountant shall keep accurate accounts of all receipts, disbursements and assets of the reserve fund and, at the close of such fiscal year and at such other times as the board of county commissioners may request, prepare and submit to said board a statement of receipts and disbursements and of the assets of the reserve fund. He shall annually, and within thirty days after the close of each fiscal year, furnish such statement to the board of health and/or mental health administrative unit in the county. (1965, c. 963, s. 5.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 5, effective July 1, 1973.

Article 11.

Requiring County, Municipal, and Other Officials to Make Contracts for Auditing and Standardizing Bookkeeping Systems.

§§ 153-143 to 153-147: Repealed by Session Laws 1971, c. 780, s. 8, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Article 12.

Sinking Funds.

§§ 153-148 to 153-151: Repealed by Session Laws 1971, c. 780, s. 9, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Article 13.

County Poor.

§ 153-152. Support of poor; superintendent of county home; paupers removing to county; hospital treatment.—The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well-ordering. They may employ biennially some competent person as superintendent of the county home for the aged and infirm, and may remove him for cause. They may institute proceedings against any person coming into the county who is likely to become chargeable thereto, and cause his removal to the county where he was last legally settled; and they may recover from such county by action all charges and expenses incurred for the maintenance or removal of such poor person. The board of county commissioners of each county is hereby authorized to levy, impose and collect special taxes upon all taxable property, not to exceed five cents on the one hundred dollars valuation, required for the special and necessary purposes set forth above in addition to any taxes authorized by any other special or general act and in addition to the constitutional limit of taxes levied for general county purposes, it being the purpose of the General Assembly hereby to give its approval for the levy of such special taxes for such necessary purposes.

The board of commissioners of each county, when deemed for the best interest of the county, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions located within or without the county to provide for the medical treatment and hospitalization of the sick and afflicted poor of the county upon such terms and conditions as may be agreed; provided the annual payments required under such contract shall not be in excess of ten thousand ($10,000.00) dollars. The full faith and credit of each county shall be deemed to be pledged for the payment of the amounts due under said contracts and the special approval of the General Assembly is hereby given to the execution thereof and to the levy of a special ad valorem tax in addition to other taxes authorized by law for the special purpose of the payment of the amounts to become due thereunder. The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses and for a special purpose within the meaning of the Constitution of North Carolina and for which the special approval of the General Assembly is hereby given, and shall be valid and binding without a vote of the majority of the qualified voters of the county and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the County Fiscal Control Act and acts amendatory thereof. (Code, s. 3540; 1891, c. 138; Rev., s. 1327; C. S., s. 1335; 1935, c. 65; 1945, c. 151; c. 562, s. 1; 1947, cc. 160, 672; 1951, cc. 734, 790; 1961, c. 838; 1967, c. 333; 1969, c. 1003, s. 6.)

Editor's Note.—

The 1967 amendment deleted "Robeson" from the former list of counties at the end of the section.

The 1969 amendment, effective July 1, 1969, deleted, at the end of the last paragraph, a proviso relating to Lincoln County, a sentence relating to Catawba County, and a sentence restricting the application of the second paragraph of this section to certain named counties.

Opinions of Attorney General. — Mr. Emmett L. Sellers, Director, Division of Medical Services, State Department of Social Services, 7/25/69.

§ 153-153. County home for aged and infirm.

Quoted in State v. Whitt, 2 N.C. App. 601, 163 S.E.2d 531 (1968).

§ 153-157. Families of indigent militiamen to be supported.—When any citizen of the State is absent on service as a militiaman or member of the State Guard, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (1779, c. 152, P. R.; R. C., c. 86, s. 14; Code, s. 3546; Rev., s. 1331; C. S., s. 1340.)

Editor's Note.—This section is set out in the Supplement to correct an error appearing in the replacement volume.

§ 153-159. Legal settlements; how acquired.

Legal Settlement of Mental Incompetent for Welfare Payment Purposes. — See opinion of Attorney General to Mr. Joseph P.B. McCauley, Director, Gaston County Department of Social Services, 1/22/70.

Daughter Reaching Majority and Confined in Institution Retained Settlement in County from Which She Came Although Her Parent Moved to Another County While She Was Confined.—See opinion of Attorney General to Mrs. Bing Lau, 41 N.C.A.G. 472 (1971).

Nursing Home Residence Not Sufficient for "Legal Settlement".—See opinion of Attorney General to Mr. Joe Freeman Britt, Robeson County Attorney, 41 N.C.A.G. 197 (1971).

ARTICLE 14A.

Medical Care of Sick and Afflicted Poor.

§ 153-176.1. Authority to provide hospitalization and medical care; contracts with hospitals.

Cited in Moody v. Transylvania County, 271 N.C. 384, 156 S.E.2d 716 (1967).

ARTICLE 15.

County Prisoners.

§§ **153-179, 153-180:** Repealed by Session Laws 1967, c. 581, s. 4, effective July 1, 1967.

§ **153-189.1. Transfer of prisoners when necessary for safety and security; application of section to municipalities.**—Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county, the resident judge of the superior court or any judge holding superior court in the district may order the prisoner transferred to a fit and secure jail in some other county, or to a unit of the State Prison System designated by the Commissioner of Correction or his authorized representative, where the prisoner shall be held for such length of time as the judge may direct. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where he is to be held, and for returning him to the common jail of the county from which he was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Commissioner of Correction, shall receive and release custody of the prisoner in accordance with the terms of the court order. The county from which a prisoner is transferred shall pay to the county receiving the prisoner in its jail, or to the State Department of Correction if he is received in a prison unit, the actual cost of maintaining the prisoner in that jail or prison unit for the time designated by the court.

Whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the safekeeping of such prisoners, the resident judge of the superior court or any judge holding superior court in the district may order the prisoners transferred to a unit of the State Department of Correction designated by the Commissioner of Correction or his authorized representative, where the prisoners may be held for such length of time as the judge may direct, such detention to be in cell separate from that used for imprisonment of persons already convicted of crimes. The sheriff of the county from which the prisoners are removed shall be responsible for conveying the prisoners to the prison unit or units where they are to be held, and for returning them to the common jail of the county from which they were transferred. However, if due to the number of prisoners to be conveyed the sheriff is unable to provide adequate transportation, he may request the assistance of the Department of Correction, and the Department of Correction is hereby authorized and directed to cooperate with the sheriff and provide whatever assistance is available, both in vehicles and manpower, to accomplish the conveying of the prisoners to and from the county to the designated prison unit or units. The officer in charge of the prison unit designated by the Commissioner of Correction or his authorized representative shall receive and release the custody of the prisoners in accordance with the terms of the court order. The county from which the prisoners are transferred shall pay to the State Department of Correction the actual cost of transporting and maintaining the prisoners. However, if the county commissioners shall certify to the Governor that the county is unable to pay the bill submitted by the State Department of Correction to the county for the services rendered, either in whole or in part, the Governor may recommend to the Council of State that the State of North Carolina assume and pay, in whole or in part, the obligation of the county to the Department of Correction, and upon approval of the Council of State the amount so approved shall be paid from Contingency and Emergency Fund to the Department of Correction.

When, due to an emergency, it is not feasible to obtain from a judge of superior court a prior order of transfer, the sheriff of the county and the Department of

Correction may exercise the authority hereinafter conferred; provided, however, that the sheriff shall, as soon as possible after the emergency, obtain an order from the judge authorizing the prisoners to be held in the designated place of confinement for such period as the judge may direct. All provisions of this section shall be applicable to municipalities whenever prisoners are arrested in such numbers that the municipal jail facilities and the county jail facilities are insufficient and inadequate for the safekeeping of the prisoners. The chief of police is hereby authorized to exercise the authority herein conferred upon the sheriff, and the cost of transporting and maintaining the prisoners shall be paid by the municipality unless action is taken by the Governor and Council of State as herein provided for counties which are unable to pay such costs. (1957, c. 1265; 1967, c. 996, ss. 13, 15; 1969, cc. 462, 1130.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the fifth sentence and substituted "Commissioner of Correction" for "Director of Prisons" in the first and fourth sentences.

The first 1969 amendment added the second paragraph.

The second 1969 amendment added the third paragraph.

Opinions of Attorney General. — Mr. Martin R. Peterson, N. C. Department of Corrections, 8/18/69.

Transfer Directly to Central Prison.—Under this section the trial court, upon making an appropriate finding that it is necessary for the safety of the defendant, can order a defendant transferred to "a unit of the State Prison System designated by the Commissioner of Correction or his authorized representative," but the court should not order defendant transferred directly to central prison absent a finding that the central prison has been properly designated for that purpose by the Commissioner of Correction or his authorized representative. State v. Sherron, 4 N.C. App. 386, 166 S.E.2d 836 (1969).

§ 153-190.1. Duty to receive and retain prisoners brought in by law-enforcement officers.

Opinions of Attorney General.—Mr. Lee J. Greer, Prosecutor, Thirteenth Judicial District, 11/20/69.

Jailers' Duties May Not Be Imposed on Law-Enforcement Officer Delivering Prisoner to Jail. — See opinion of Attorney General to Colonel Edwin C. Guy, North Carolina State Highway Patrol, 41 N.C.A.G. 412 (1971).

§ 153-194. Convicts who may be sentenced to or worked on roads and public works.

Editor's Note.—

For note on imprisonment of an indigent at law per diem rate for failure to pay fine, see 6 Wake Forest Intra. L. Rev. 509 (1970).

Cited in State v. Whitt, 2 N.C. App. 601, 163 S.E.2d 531 (1968).

§ 153-196. Convicts sentenced to public works to be under county control.

Cited in State v. Whitt, 2 N.C. App. 601, 163 S.E.2d 531 (1968).

ARTICLE 16.

District Prison Farm.

§ 153-201. Organization meeting; purchase of site; equipment; separation of sexes.—The board of trustees shall, as soon as possible, and not later than sixty days after appointment, meet and organize by electing a chairman and secretary. They shall proceed promptly with the purchase of a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities. They shall provide for the necessary stock, tools, and farm equipment, and shall cause to be erected suitable buildings for the housing, detention and keeping the prisoners assigned to said district farm, due regard being given to the separation of the sexes and such other plans for segregation as their judgment and existing conditions may suggest. (1931, c. 142, s. 3; 1969, c. 1279.)

Editor's Note. — The 1969 amendment deleted "races and" preceding "sexes" in the catchline and "and races" following "sexes" in the last sentence.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

ARTICLE 17.

Houses of Correction.

§ 153-209. Commissioners may establish houses of correction.

Quoted in State v. Whitt, 2 N.C. App. 601, 163 S.E.2d 531 (1968).

§ 153-220. Absconding offenders punished.

Quoted in State v. Whitt, 2 N.C. App. 601, 163 S.E.2d 531 (1968).

ARTICLE 18.

Consolidation, Annexation and Joint Administration of Counties.

§ 153-246. Joint administrative functions of contiguous counties.— Any two or more counties which are contiguous or which lie in a continuous boundary are authorized, whenever it is deemed for their best interests, to enter into written agreements for the joint performance of any and all similar administrative functions and activities of their local governments. Such joint administration may be performed through consolidated agencies, jointly owned buildings or institutions, joint boards or commissions, agreements for joint construction or repair work, or purchasing of apparatus, supplies, material or equipment, or any other appropriate means.

Such written agreement shall set forth what functions or activities of local government shall thus be jointly carried on, and shall specify definitely the manner in which the expenses thereof shall be apportioned and how any fees or revenue derived therefrom shall be apportioned. Upon such agreement being ratified by the governing bodies of the counties subscribing thereto, it shall be spread upon their respective minutes.

Whenever any such agreement provides for a consolidated agency, board, commission, or institution set up to function jointly for the parties thereto, the consolidated agency, board, commission, or institution shall be vested with all the powers, rights, duties and functions theretofore existing by law in the separate agencies, boards, commissions, or institutions so consolidated or theretofore vested in the governing boards of the parties to the agreement, unless the agreement shall specify a more limited delegation of authority.

No such agreement shall be entered into for a period of more than two years from the date thereof, but such agreements may be renewed for a period not exceeding two years at any one time.

In the same manner and subject to the same provisions herein, any municipality may enter into such an agreement with other municipalities within the county, or one or more municipalities may enter into such an agreement with the county in which located, to the end that functions of local government may, as far as practicable, be consolidated.

It is the purpose of this section to bring about efficiency and economy in local government through a consolidation of administrative agencies thereof, and to effectuate this purpose this section shall be liberally construed. (1933, c. 195; 1969, c. 380, ss. 1-3.)

Local Modification. — Edgecombe and municipalities therein: 1967, c. 1192; Forsyth: 1967, c. 382; 1969, c. 274, amending 1967, c. 382; Nash and municipalities therein: 1967, c. 1192; city of Winston-Salem: 1969, c. 274, amending 1967, c. 382; town of Kernersville: 1969, c. 274.

Editor's Note.—

The 1969 amendment rewrote the first, third and fifth paragraphs.

Section 4 of the amendatory act provides: "This act shall be deemed supplementary to all powers heretofore conferred by law and shall not be deemed to repeal any special, local, or private act heretofore enacted."

ARTICLE 19A.

Public Libraries.

§ **153-250.1. Establishment of library.** — The governing body of any county or municipality may, in its discretion, establish and support a free public library, using for such establishment and support any nontax revenues which may be available for such purposes. The word "support" as used in this Article shall include, but is not limited to, purchase of land for library buildings, the purchase and renovation of buildings for library purposes, the construction of buildings for library purposes, purchase of library books, materials and equipment, compensation of library personnel, and all maintenance expenses for library property and equipment. Property taxes may be used for the support of public library services when the approval of the voters for the levy of a tax has been approved as provided in G.S. 153-250.8 of this Article or as may be provided in any special act. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

Editor's Note.—This Article, comprising §§ 153-250.1 to 153-250.13, was formerly Article 8, §§ 160-65 to 160-77, of Chapter 160. It was reenacted and transferred to its present location by Session Laws 1971, c. 698, s. 3, effective Jan. 1, 1972.

The operation of a public library meets the test of "governmental function." Siebold v. Kinston-Lenoir County Pub. Library, 264 N.C. 360, 141 S.E.2d 519 (1965).

§ **153-250.2. Library free.**—The use of every library established under this Article shall be forever free to the inhabitants of the county or municipality providing or contracting for library services, subject to such reasonable rules and regulations as may be adopted by the board of trustees of the library and approved by the governing body of the county or municipality. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

§ **153-250.3. Library trustees appointed.**—For the government of each library established by a county or municipality there shall be a board of six trustees appointed by the governing body of the county or municipality, chosen from the citizens at large with reference to their fitness for such office. For the initial term, two members shall be appointed for terms of two years, two members for terms of four years, and two members for terms of six years, and until their successors are appointed and qualified. Thereafter the terms of members shall be for six years and until their successors are appointed and qualified. The governing body of the county or municipality may, in its discretion, designate one of its own members to serve ex officio as one of the six members of the library board in addition to his other duties. Such governing body member shall serve on the library board for the duration of his term of office and shall have full rights, duties and responsibilities as a member of the board. All vacancies on the board shall be immediately reported by the trustees to the governing body which shall fill each vacancy for the unexpired term. The governing body of the county or municipality may remove any trustee for incapacity, unfitness, misconduct, or for neglect of duty. Members of the board shall serve without compensation. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 1.)

§ **153-250.4. Joint libraries.**—(a) Two or more counties or municipalities, or a county or counties and a municipality or municipalities, may enter into an agreement for the joint performance and support of public library service for the benefit of the citizens of all the participating units. The joint library shall be established according to the terms of a resolution approved by the governing bodies of the participating units. The resolution shall provide for the composition of the board of trustees to govern the library and may contain any additional provisions concerning the operation and responsibility of the joint library on which all the participating units shall agree.

(b) The board of trustees of a joint library shall be composed of not less than six members and not more than 12 members. The resolution establishing the library shall specify the total number of trustees and the number of trustees to be appointed by the governing body of each participating county or municipality. The resolution shall also set forth the terms of office for the trustees, but no term of office shall be for less than two years, nor for more than six years. The governing body of each participating county or municipality shall make its appointments from the citizens at large with reference to their fitness for such office; provided, that such governing body may, in its discretion, designate as one of its members of the joint library board of trustees a member of the governing body to serve ex officio in addition to his other duties, and provided further, that such governing body may in its discretion, if it also supports a county or municipal library, designate one or more of its members of the joint library board of trustees from the membership of such county or municipal library board of trustees, such members to serve ex officio on the joint library board in addition to their other duties. Such governing body member, or county or municipal library board members, shall serve on the joint library board of trustees for the duration of his or their term of office on the governing body, or county or municipal library board, respectively. Any vacancy on the joint library board shall be filled for the unexpired term by the governing body of the county or municipality making the initial appointment. The governing body of any participating county or municipality shall have the power to remove any trustee appointed by it for incapacity, unfitness, misconduct, or neglect of duty. Members of the board shall serve without compensation.

(c) The resolution establishing the joint library shall contain a statement governing the distribution of property between the participating counties and municipalities in the event that any county or municipality should elect to withdraw from the agreement. Any county or municipality wishing to withdraw from participation in joint operation of a library shall give notice to the other participating counties and municipalities by December 31st prior to the beginning of the fiscal year in which it wishes to withdraw participation and support. From and after the expiration of the six months' period, such county or municipality shall be entitled to such proportion of the property of the joint library as may have been agreed upon in the resolution establishing the library. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

§ **153-250.5. Contracts with other libraries.**—The governing body of any county or municipality, or the board of trustees of any county or municipal library board with the consent of its governing body, or the board of trustees of a joint library, or the governing board of any corporation or association providing free public library service, may enter into a contract with and make annual appropriations to any county or municipality, county or municipal library, joint library, corporation or association providing free public library service, or other public or private agency providing library services for one or more public library services, including but not limited to the use of physical facilities and library equipment; the purchase, cataloguing and circulation of books, periodicals, recordings and other items and materials customarily acquired and circulated by the public libraries, the services of professionally qualified library personnel, and the provision of any special library service. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

§ 153-250.6. Powers and duties of trustees.—(a) The board of trustees of a county or municipal library shall organize immediately after its appointment and shall elect one of its members as chairman. It may elect a secretary and a treasurer and such other officers as it may deem necessary, either from the membership of the board or from the employees of the library.

The board of trustees shall have the power

(1) To adopt such bylaws, rules and regulations for its own guidance and for the government of the library as may be necessary and in conformity with law;

(2) With the consent of the governing body of the county or municipality, to lease or purchase and occupy an appropriate building or buildings, or to erect an appropriate building or buildings upon lands acquired by gift, devise or purchase;

(3) To supervise and care for the physical facilities constructed, leased or set apart for library purposes;

(4) To appoint a chief librarian or director of library service, and, upon recommendation of such librarian or director, to appoint assistant librarians and other employees, and to remove such librarians or employees; provided, that no vacancies existing or occurring in the position of chief librarian or director in any such library shall be filled by the appointment or designation of any person who is not certified as a professional librarian by the North Carolina Library Certification Board under the provisions of G.S. 125-9 or G.S. 125-10; the employees of a county or municipal library shall be for all purposes the employees of the county or municipality, as the case may be;

(5) To fix the compensation of the chief librarian or director, and in consultation with such librarian or director to fix the compensation of the assistant librarians and other employees of the library; provided, (i) that all salaries and other compensation for library employees shall be in accordance with the provisions of any pay plan applying to all employees of the governmental unit and which has been approved by the county or municipal governing board, and, (ii) that all salaries and other compensation for library employees must be in accordance with appropriations for salaries and other compensation for library employees approved by the county or municipal governing body in the annual budget for such county or municipality;

(6) To prepare the annual budget for the library for submission to the governing body of the county or municipality;

(7) To extend the privileges and use of such library to nonresidents of the county or municipality, upon such terms and conditions as it may prescribe.

(b) Except as may be otherwise provided in this Article, the board of trustees of a joint library shall have the same powers and privileges as the board of trustees of a county or municipal library. With the consent of the governing bodies of the participating units, the board of trustees of each joint library shall prepare a pay plan governing the compensation of all employees of the joint library.

(c) The board of trustees of every public library shall make an annual report to the governing body of the county or municipality, or counties and municipalities, providing financial support for such library, and shall forward a copy of such report to the North Carolina State Library. (1953, c. 721; 1963, c. 945; 1969, c. 488; 1971, c. 698, s. 3.)

§ 153-250.7. Budget adoption and control.—(a) County or Municipal Library.—The board of trustees of every county or municipal library shall prepare and recommend an annual budget to the governing body of the county or municipality. The budget for the library shall be adopted as part of the county or municipal budget. All moneys received for such library shall be paid into the county treasury or the municipal treasury, shall be earmarked for the use of the library, and shall be paid out as other county or municipal funds are paid out; provided, that county or municipal library funds may, in the discretion of the governing board and notwithstanding the provisions of the County or Municipal Fiscal Control Acts, be paid out on warrants signed by the treasurer of the library board or trustees and countersigned by the county accountant or municipal accountant; provided, further, the countersigning officer shall countersign such warrants when they are within the funds earmarked for the library and within the amount of appropriations duly made by the governing body of the county or municipality. Whenever the treasurer of the library board shall sign warrants or otherwise handle moneys of the library, he shall, before entering upon his duties, give bond to the county or municipality in an amount fixed by the governing body of such county or municipality, conditioned upon the faithful discharge of his official duties.

(b) Joint Libraries.—The amount each participating governmental unit shall contribute to the establishment and support of a joint library shall be determined annually by agreement between and among the participating counties and municipalities on the basis of a recommended budget submitted to such county and municipal governing bodies by the joint library board of trustees. The county and municipal governing bodies, meeting jointly wherever possible, shall determine their proportionate appropriations on the basis of the overall need for public library service in the area served by the library, the benefits to each participating unit arising from library service, and the funds available in each participating unit to support library service. Each participating county and municipality shall pay over its annual appropriation for joint library purposes to the treasurer of the joint library board of trustees, according to such schedule as may have been agreed upon with the library board. The joint library board of trustees shall adopt a final budget in accordance with the appropriations made to it by the participating counties and municipalities, and any other revenues available to such joint library. The treasurer of the board of trustees of the joint library, before entering upon his duties, shall give bond to the board of trustees in an amount fixed by the board of trustees and approved by the governing bodies of the participating governmental units, conditioned upon the faithful discharge of his duties. All funds, received by the joint library from any source shall be deposited by the treasurer to the account of the library, shall be earmarked for the use of the library, and shall be paid out on warrants signed by the librarian and countersigned by the treasurer. The treasurer shall countersign such warrants only when they are in accordance with the budget adopted by the board of trustees of the joint library and within the funds available to the library. In lieu of paying overall appropriations to the treasurer of the board of trustees of the joint library, the participating counties and municipalities may, in accordance with a resolution agreed to by each such county and municipality, contract for the financial administration of the library to be handled by a single participating county or municipality, in which case the procedures of the County or Municipal Fiscal Control Acts, whichever is applicable, shall apply. The board of trustees of each joint library shall arrange for an annual audit of its financial transactions and shall furnish each participating county or municipality with a copy of such audit. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

§ **153-250.8. Special tax for library.**—Subsequent to the establishment of a library by a county or municipality, the governing body of the county or municipality may upon its own motion and shall, upon a petition signed by voters of the county or municipality equal in number to at least fifteen percent (15%) of the total number of votes cast for the office of Governor in the last preceding general election in such county or municipality, submit to the voters at a special election the question of whether a special tax shall be levied for the support of such library.

Such question shall be submitted to the voters either at the next general election for county officers in the case of a county, or at the next general election for municipal officers in the case of a municipality, or at a special election to be called by the governing body of the county or municipality for that purpose: Provided, that no special election shall be held within 60 days of any general election for State, county or municipal officers. Such special election shall be conducted according to the laws governing general elections for county or municipal officers in such county or municipality.

The form of the question as stated on the ballot shall be in substantially the words: "For the levy of a special library tax of not more than .... cents (........¢)."; and "Against the levy of a special library tax of not more than .... cents (........¢)." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (X). Provided, that the maximum tax levy to be submitted to the voters shall be determined by the governing body of such county or municipality.

If a majority of the qualified voters in such election favor the levy of the tax, the governing body of the county or municipality shall levy and cause to be collected as other general taxes are collected, a special library tax within the limits approved by the voters in an amount which, when taken with nontax revenues, will be sufficient to meet annual appropriations for library purposes approved by the governing body of such county or municipality.

In any county or municipality in which a tax for library purposes has been voted under this section, or under any other general, public-local, private or special law, the governing body of such county or municipality may, on its own motion with the recommendation of the board of trustees of the library, and shall, upon a petition signed by voters of the county or municipality equal in number to at least fifteen percent (15%) of the total number of votes cast for Governor in the last preceding general election in such county or municipality, submit to the voters of such county or municipality the question of an increase or decrease of such tax. Such question shall be submitted to the voters in the manner provided by this section. (1953, c. 721; 1963, c. 945; 1967, c. 703, ss. 1, 2; 1971, c. 698, s. 3.)

§ 153-250.9. Issuance of bonds.—Counties and municipalities are hereby authorized to issue bonds and notes, and to levy property taxes to meet payments of principal and interest on such bonds or notes, to purchase necessary land and to purchase or construct library buildings and equipment. Counties may issue such bonds or notes under the provisions of the County Finance Act and municipalities may issue such bonds or notes under the provisions of the Municipal Finance Act. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

§ 153-250.10. Power to take property by gift or devise.—With the consent of the governing body of the county or municipality, or the governing bodies of the governmental units participating in a joint library, expressed by an appropriate resolution or ordinance, the library board of trustees may accept any gift, grant, devise, or bequest made or offered by any person for library purposes and may carry out the conditions of such donations. The county or municipality, or counties and municipalities participating in a joint library, shall have authority to acquire a site, levy a tax in accordance with and within the limitations set forth in this Article, and pledge by ordinance or resolution compliance with all the terms and conditions of the gift, grant, devise, or bequest so accepted. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

§ 153-250.11. Title to property vested in the county or municipality.—Title to all property given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired by any county or municipality for a library shall vest in and be held in the name of such county or municipality, and any conveyance, grant, donation, devise, bequest or gift to or in the name of any public library board shall be deemed to have been directly to such county or municipality; provided, that when such property is given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired for the benefit of or in the name of a joint library, title to such property shall vest in and be held in the names of the participating counties or municipalities in the same proportion as set forth in the resolution establishing the library. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

§ **153-250.12. Ordinances for protection of library.** — The governing body of any county or municipality establishing a public library shall have power to pass ordinances imposing penalties for any damage to or failure to return any book, plate, picture, engraving, map, magazine, pamphlet, newspaper, manuscript, film, recording, audio-visual equipment, or other specimen, work of literature, or object of art or of curiosity, or piece of equipment, belonging to such library. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

§ **153-250.13. Retention, removal, destruction, etc., of library items or equipment.**—(a) Any person who shall

(1) Willfully or intentionally fail to return to a public library any library item or equipment belonging to such public library within 15 days after the librarian has mailed or delivered in person notice in writing that the time for which such library item or equipment may be kept under library regulations has expired, or

(2) Willfully or intentionally remove from the premises of the public library any library item of equipment without charging it out in accordance with the regulations of the library, or

(3) Willfully or wantonly damage, deface, mutilate, or otherwise destroy any library item or equipment, whether on the library premises or on loan, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days; provided, that the notice required by this section shall bear upon its face a copy of this section.

(b) For the purposes of this section, "library item or equipment" shall be defined to include any book, plate, picture, engraving, map, magazine, pamphlet, newspaper, manuscript, film, recording, or other specimen, work of literature, or object of art or of historical significance or of curiosity owned by the library, or any audio-visual equipment or other equipment owned by the library. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3.)

ARTICLE 20.

Planning and Zoning Areas.

§ **153-251. Authority of county commissioners to create areas.**

Editor's Note.—For an article on local legislation in the General Assembly, discussing this section, see 45 N.C.L. Rev. 340 (1967).

ARTICLE 20A.

Subdivisions.

§ **153-266.1. Regulations authorized for territory outside municipal jurisdiction; approval of regulations within municipal jurisdiction; withdrawal of approval; regulations within zoned areas only.**—The board of county commissioners of any county is hereby authorized to enact an ordinance regulating the platting and recording of any subdivision of land as defined by this article, lying within the county and outside the subdivision-regulation jurisdiction of any municipality. Such ordinance may also regulate territory within the subdivision-regulation jurisdiction of any municipality whose governing body by resolution agrees to such regulation; provided, however, that any such municipal governing body may, upon one year's written notice, withdraw its approval of the county subdivision regulations, and those regulations shall have no further effect within the municipality's jurisdiction.

Where the board of commissioners has determined pursuant to § 153-266.13 that it is not necessary to zone the entire county in order to serve the public interest and has designated one or more portions of the county as a zoning area or areas, and where zoning regulations have been adopted for such area or areas, the board may in its discretion elect to adopt and enforce subdivision regulations applying only to such area or areas. Any such area or areas may be regulated in the same manner as if the entire county was regulated, and the remainder of the county need not be regulated. (1959, c. 1007; 1965, c. 195.)

Editor's Note. — The 1965 amendment added the second paragraph.

Limitation on Authority of County Commissioners to Adopt Subdivision Control Ordinance. — This section confers upon a board of county commissioners authority to adopt a subdivision control ordinance. However, this authority may be lawfully exercised only within prescribed limitations. Thus, a subdivision ordinance adopted by the board of county commissioners applies solely to land lying within the county and outside the subdivision-regulation jurisdiction of any municipality. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Prosecution for Violation of § 153-266.6. — As one of the prerequisites to conviction for violation of § 153-266.6, it must be alleged and established that an ordinance regulating the subdivision of land was adopted by the board of county commissioners in accordance with the authority conferred by this section. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

The owner or agent of the owner of land within the "platting jurisdiction" granted the county commissioners by this section is the only person subject to criminal prosecution for violation of § 153-266.6. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

A warrant is fatally defective if it fails to allege one of the essential elements of the criminal offense created and defined in § 153-266.6, namely, that defendant was the owner or agent of the owner of land within the platting jurisdiction granted to the county commissioners by this section. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153-266.2. Public hearing on subdivision control ordinance or amendment; notice.

Cited in State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153-266.3. Regulation only by ordinance; contents and requirements of ordinance generally; plats.

Local Modification. — Guilford: 1969, c. 846.

Section Does Not Authorize Laying Out, etc., of Highways, Streets or Alleys within Meaning of Constitution. — The statutory provisions of this section and § 153-266.4, as to what may and what must be included in a county subdivision ordinance, do not constitute "authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys" within the meaning of N.C. Const., Art. II, § 24. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153-266.4. Ordinance to contain procedure for plat approval; certain agencies to be given opportunity to make recommendations; approval prerequisite to plat recordation; statement by owner.

Editor's Note.—For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

Section Does Not Authorize Laying Out, etc., of Highways, Streets or Alleys within Meaning of Constitution. — The statutory provisions of this section and § 153-266.3 as to what may and what must be included in a county subdivision ordinance, do not constitute "authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys" within the meaning of N.C. Const., Art. II, § 24. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153-266.6. Sale of land by reference to unapproved plat a misdemeanor; injunctions.

Local Modification.—Guilford: 1971, c. 666.

Purpose of Section.—The sole purpose of this section is to compel compliance with ordinance provisions which seek to prevent any subdivision of land covered by its terms unless and until the proposed subdivision map has been submitted to and approved by designated governmental agencies. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

What this section condemns as a misdemeanor is the description of land in any contract of sale, deed or other instrument of transfer by reference to a subdivision plat that has not been properly approved and recorded. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

The general allegation that defendant's conduct constituted a misdemeanor in violation of this section is insufficient to charge a violation of the statute. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Recording of Instrument Containing Improper Reference Is Immaterial.—The misdemeanor defined in this section relates to a sale or transfer of land with reference to a plat showing a subdivision of land before such plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds. Whether the contract of sale, deed or other instrument of transfer is recorded is immaterial. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Prerequisites to Conviction. — As one of the prerequisites to conviction for violation of this section, it must be alleged and established that an ordinance regulating the subdivision of land was adopted by the board of county commissioners in accordance with the authority conferred by § 153-266.1. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Person Subject to Prosecution. — The owner or agent of the owner of land within the "platting jurisdiction" granted the county commissioners by § 153-266.1 is the only person subject to criminal prosecution for violation of this section. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Defective Warrant.—A warrant is fatally defective if it fails to allege one of the essential elements of the criminal offense created and defined in this section, namely, that defendant was the owner or agent of the owner of land within the platting jurisdiction granted to the county commissioners by § 153-266.1. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153-266.7. Subdivision defined.

Stated in State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153-266.9: Repealed by Session Laws 1969, c. 1010, s. 2, effective July 1, 1969.

Editor's Note.—The repealed section had been previously amended by Session Laws 1965, cc. 21, 337; c. 348, s. 1; c. 526, s. 2; 1969, c. 410.

ARTICLE 20B.

Zoning and Regulation of Buildings.

§ 153-266.10. Authority of county commissioners.—For the purpose of promoting health, safety, morals, or the general welfare, the board of county commissioners of any county is hereby empowered to regulate and restrict

(1) The height, number of stories, and size of buildings and other structures,
(2) The percentage of lot that may be occupied,
(3) The size of yards, courts, and other open spaces,
(4) The density of population, and
(5) The location and use of buildings, structures, and land for trade, industry, residence or other purposes, except farming.

No such regulations shall affect bona fide farms, but any use of such property for nonfarm purposes shall be subject to such regulations. Such regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. Such regulations may also provide that the board of adjustment or the board of county commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein, and may impose reasonable and appropriate conditions and safeguards upon such permits. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4.)

Local Modification.—Mecklenburg: 1967, c. 611, s. 1; Nash: 1967, c. 772.

Editor's Note. — The 1967 amendment added the last sentence.

Counties have no inherent authority to enact zoning ordinances. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Delegation of Power to Adopt Zoning Ordinances.—The authority of the General Assembly to delegate to municipal corporations power to legislate concerning local problems, such as zoning, is an exception (established by custom in most, if not all, of the states) to the general rule that legislative powers, vested in the General Assembly by N.C. Const., Art. II, § 1, may not be delegated by it. This exception to the doctrine of nondelegation is not limited to a delegation of such legislative authority to incorporated cities and towns, but extends, as to oher types of local matters, to a like delegation to counties and other units established by the General Assembly for local government. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

The General Assembly may, notwithstanding N.C. Const., Art. II, § 1, confer upon county boards of commissioners power to adopt zoning ordinances otherwise valid. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

But the legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone; that is, the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon. It follows that a county zoning ordinance may not delegate such legislative powers to the county board of adjustment. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Similar Provisions.—The language of § 160-172, granting cities and towns the power to regulate by zoning, and this section, granting the same power to boards of commissioners of counties, are almost identical in phraseology, as are § 160-178, providing for a board of adjustment under a city ordinance, and § 153-266.17, providing for a board of adjustment under a county ordinance. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

Sections 160-172 and 160-173 [now §§ 160A-381 and 160A-382] confer upon the legislative bodies of cities and incorporated towns essentially the same authority as that conferred upon boards of county commissioners by this section and § 153-266.11, respectively. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Zoning Ordinance Is Presumed Valid.—The presumption is that a zoning ordinance as a whole is a proper exercise of the police power. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Burden of Showing Invalidity Is on One Asserting It.—The burden to show that a zoning ordinance as a whole is not a proper exercise of the police power rests upon a property owner who asserts its invalidity. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Showing Ordinance Depreciates Complainant's Property Is Insufficient.—The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Power of County Commissioners to Grant Special Exceptions. — This section, which authorizes the board of county commissioners by regulation to provide "that the board of adjustment or the board of county commissioners may issue special use permits or conditional permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified" in the zoning ordinance, did not purport to confer more power upon the commissioners to grant special exceptions than the commissioners could delegate to the board of adjustment. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Like the board of adjustment, the commissioners cannot deny applicants a permit in their unguided discretion or, stated differently, refuse it solely because, in their view, a mobile-home park would "adversely affect the public interest." The commissioners must also proceed under standards, rules, and regulations, uniformly applicable to all who apply for permits. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Ordinance Requiring Denial of Permit Held Invalid.—Under this Article so much of an ordinance as required the board of adjustment to deny a permit for the establishment of a mobile-home park in an A-1 agricultural district unless it found "that the granting of the special exception will not adversely affect the public interest" was beyond the authority of the board of county commissioners to enact and so was invalid. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Quoted in Michael v. Guilford County, 269 N.C. 515, 153 S.E.2d 106 (1967).

§ 153-266.11. Districts.

Quoted in Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

§ 153-266.13. Territory which may be regulated; areas less than entire county.—The county zoning ordinance may regulate all territory in the county outside the zoning jurisdiction of any municipalities within the county. In addition, the county zoning ordinance may regulate territory within the zoning jurisdiction of any municipality whose governing body, by resolution, agrees to such regulation; provided, however, that any such municipal governing body may, upon one year's written notice, withdraw its approval of the county zoning regulations, and those regulations shall have no further effect within the municipality's jurisdiction.

Where the board of commissioners determines that it is not necessary to zone the entire county in order to serve the public interest, the board may designate one or more portions of the county as a zoning area or areas. Any such area or areas may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated. No zoning area may be designated which is less than six hundred forty (640) acres in area, or which contains less than ten separate tracts of land in separate ownership. (1959, c. 1006, s. 1; 1965, c. 194, s. 2.)

Editor's Note. — The 1965 amendment deleted "after a public hearing" preceding "designate" in the first sentence of the second paragraph.

Stated in State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Cited in Austin v. Brunnemer, 266 N.C. 697, 147 S.E.2d 182 (1966).

§ 153-266.14. Planning board; advisory commissions.—In order to avail itself of the powers conferred by this article, the board of commissioners shall appoint a county planning board or a joint planning board under the provisions of G. S. 153-9 (40) or of a special act of the General Assembly. If the board of commissioners creates one or more zoning areas within the county under the provisions of G. S. 153-266.13 hereof, it may also appoint an advisory commission for each such zoning area, composed of residents of the area. Any such advisory commission shall be charged with the duty of making recommendations to the planning board and the board of commissioners concerning zoning regulations for its area. (1959, c. 1006, s. 1; 1965, c. 194, s. 3.)

Editor's Note. – The 1965 amendment substituted "may" for "shall" preceding "also appoint" in the second sentence and substituted "Any such" for "Each" at the beginning of the last sentence.

§ 153-266.15. Preparation of zoning plan by board; certification to county commissioners; hearings; action by county commissioners; amendments.

The manifest intention of the General Assembly was that a public hearing be conducted at which those who opposed and those who favored adoption of an ordinance would have a fair opportunity to present their respective views. Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

The requirement that a public hearing be conducted is mandatory. Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

Quoted in Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

Cited in Michael v. Guilford County, 269 N C. 515, 153 S.E.2d 106 (1967).

§ 153-266.16. Requirements for public hearings.

The manifest intention of the General Assembly was that a public hearing be conducted at which those who opposed and those who favored adoption of the ordinance would have a fair opportunity to present their respective views. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968); Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

The requirement that a public hearing be conducted is mandatory. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968); Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

County commissioners are not required to hear all persons in attendance without limitation as to number and time. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

Nor to Answer Questions.—This section does not require the county commissioners to answer questions asked by those in attendance at the public meeting. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

Repetition of Same Views Not Contemplated.—The General Assembly did not contemplate that all persons entertaining the same views would have an unqualified right to iterate and reiterate these views in endless repetition. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

§ 153-266.17. Board of adjustment; appeals; special exceptions; hardship cases; review of decisions; oaths of witnesses.—If it exercises the powers granted by this article, the board of commissioners shall provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years; provided, that the board of commissioners in the appointment of the original members of such board, or in the filling of vacancies caused by the expiration of the terms of the existing members of any such board, may make appointments of certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The board of commissioners may, in its discretion, appoint not more than two alternate members to serve on such board in the absence, for any cause, of any regular members. Such alternate member or members shall be appointed for the same term or terms as regular members, and shall be appointed in the same manner as regular members and at the regular times for appointment. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. The board of commissioners may, if it deems such payments wise, provide for payment of any reasonable compensation to the members of the board of adjustment or for reimbursement of their expenses in connection with their official duties. If it deems wise in order to provide more adequate representation to residents of the county, the board of county commissioners may create a board of adjustment which is larger than that specified above, whose members shall be appointed for three-year terms or for such lesser terms as may be specified in the zoning ordinance in order to assure that the terms of all members shall not expire at the same time. Any ordinance enacted pursuant to this article shall provide that members of the board of adjustment, insofar as possible, shall be appointed from different areas within the county's zoning jurisdiction. In the event that less than the entire county is zoned, at least one resident of each area which is zoned shall be appointed to the board of adjustment.

Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the county. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken.

The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all such matters referred to it or upon which it is required to pass under any such ordinance.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The concurring vote of four fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of any ordinance adopted pursuant to this article, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to grant a variance from the provisions of such ordinance. Every decision of such board shall be subject to review by the superior court by proceedings in the nature of certiorari.

The chairman of the board of adjustment is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board. Any member of the board while temporarily acting as chairman shall have and exercise like authority. (1959, c. 1006, s. 1; 1965, c. 194, s. 4; 1967, c. 1208, ss. 5-7.)

Local Modification.—Mecklenburg: 1967, c. 611, ss. 2, 3.

Cross Reference.—For cases construing an identical provision applicable to cities and incorporated towns, see § 160-178.

Editor's Note. — The 1965 amendment added the fifth sentence in the first paragraph.

The 1967 amendment added the sixth, seventh and eighth sentences in the first paragraph, substituted "four fifths of the" for "four" near the beginning of the fifth paragraph, and added the last paragraph.

Authority to Determine Facts and Draw Conclusions.—The legislature may delegate to the board of adjustment, as a quasi-judicial body, the authority to determine facts and therefrom to draw conclusions as a basis of its official action. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

The decisions of the board are final, subject to the right of the courts to review errors in law and to give relief against its orders which are arbitrary, oppressive, or attended with manifest abuse of authority. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

The writ permitted by this section is a writ to bring the matter before the court upon the evidence presented by the record itself for review of alleged errors of law. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

A provision of a county ordinance requiring the board of adjustment to deny a permit if it finds the granting of it will adversely affect the public interest, was in excess of the authority which this section permits to be so conferred upon the board. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Similar Provisions.—The language of § 160-172, granting cities and towns the power to regulate by zoning, and § 153-266.10, granting the same power to boards of commissioners of counties, is almost identical in phraseology, as is § 160-178, providing for a board of adjustment under a city ordinance, and this section, providing for a board of adjustment under a county ordinance. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

Decisions of a board of adjustment are not subject to collateral attack. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

They Are Only Reviewable on Certiorari for Errors in Law and Abuse of Authority.—The decisions of the board of adjustment are final, subject to the right of courts on certiorari to review errors in law and to give relief against its orders which are arbitrary, oppressive or attended with manifest abuse of authority. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Equity Will Not Relieve against Zoning Unless Property Rights Invaded or There Is No Other Adequate Remedy.—There is no ground for equitable relief against zoning where there has been no invasion of property rights, or where there is an adequate remedy at law, as by certiorari or mandamus, or by pursuit of a statutory remedy. Michael v. Guilford County, 269 N.C. 515, 153 S.E.2d 106 (1967).

Depreciation of Complainant's Property Does Not Invalidate Ordinance. — The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. Michael v. Guilford County, 269 N.C. 515, 153 S.E.2d 106 (1967).

Special Exception Defined.—A special exception within the meaning of a zoning ordinance is one which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist. It is granted by the board, after a public hearing, upon a finding that the specified conditions have been satisfied. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

A property owner's right to a special-exception permit cannot be made to hinge upon whether the board considers the proposed structure beneficial or harmful to the community. Such power would subject the board to the pressures of individuals or groups who, for an infinite variety of reasons, might oppose the permit, and enable it to make a different rule of law in every case. This section, which empowers the commissioners to authorize the board of adjustment to permit special exceptions "in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance," does not purport to confer such unbridled discretion upon it. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Cited in Austin v. Brunnemer, 266 N.C. 697, 147 S.E.2d 182 (1966).

§ 153-266.18. Remedies for violations; violation a misdemeanor.

Zoning Ordinance May Be Enforced by Injunction. — The relevant enabling acts provide for enforcement of the provisions of a zoning ordinance by injunction. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

§ 153-266.22: Repealed by Session Laws 1969, c. 1010, s. 3, effective July 1, 1969.

Editor's Note.—The repealed section had previously been amended by Session Laws 1965, cc. 21, 337; c. 348, s. 1A; c. 526, s. 3; c. 1079; 1967, cc. 518, 521; 1969, c. 410.

ARTICLE 21.

Western North Carolina Regional Planning Commission.

§§ 153-267 to 153-271: Repealed by Session Laws 1971, c. 882, s. 3, effective July 1, 1971.

ARTICLE 22.

Garbage Collection and Disposal.

§ 153-272. Control of private collectors.

Local Modification.—Catawba: 1965, c. 69; Surry: 1967, c. 177.

By virtue of Session Laws 1971, c. 44, Vance should be stricken from the replacement volume.

§ 153-273. County collection and disposal; tax levy.—The board of county commissioners of any county is hereby empowered to establish and operate garbage collection and/or disposal facilities in areas outside of incorporated cities and towns where, in its opinion, the need for such facilities exists. The board may contract with any city or town to collect and/or dispose of garbage in any such area. In the disposal of garbage, the board may use any vacant land owned by the county, or it may acquire suitable sites for such purpose. The board may make appropriations to carry out the activities herein authorized. The board may impose fees for the use of disposal facilities, and in the event it shall provide for the collection of garbage, it shall charge fees for such collection service sufficient in its opinion to defray the expense of collection.

The board of commissioners of each county is hereby authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies. (1961, c. 514, s. 1; 1971, c. 568.)

Editor's Note. — The 1971 amendment added the second paragraph.

§ 153-275.1. State Highway Commission authorized to cooperate with counties in establishing and operating garbage disposal facilities.— The State Highway Commission is authorized to cooperate with any county in establishing and operating garbage disposal facilities in areas outside of incorporated cities and towns under the provisions of article 22 of chapter 153 of the General Statutes or otherwise and may make available prison and other labor and the use of equipment for said purpose to any county and the said county shall reimburse the State Highway Commission for the cost to the Commission of said labor and use and operation of said equipment. Before any work is undertaken under this section, the Commission and the county for which the work is to be performed shall enter into an agreement specifying the work to be performed and the basis upon which reimbursement will be made to the State Highway Commission. (1967, c. 707.)

ARTICLE 24.

Water and Sewerage Facilities.

§ 153-284. Acquisition and operation authorized; contracts and agreements.

Local Modification. — Guilford: 1971, c. 649; Mecklenburg: 1969, c. 315.

Editor's Note.—For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 153-286.1. Regulations relating to the operation and protection of county water and sewerage systems.—The board of county commissioners of any county is hereby authorized to adopt rules and regulations governing the use of any county water or sewerage system, and providing protection for said water or sewerage system against improper use, damage, or vandalism. A violation of any said regulations shall constitute a misdemeanor punishable by a fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed thirty days. In addition, any person, firm or corporation violating said regulations shall be liable to reimburse the county for any damages resulting from such violation. (1967, c. 462.)

ARTICLE 24A.

Special Assessments for Water and Sewerage Facilities.

§ 153-294.1. Authority to make special assessments.

Editor's Note.—For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

§ 153-294.7. Hearing on preliminary resolution; resolution directing undertaking of project.

Local Modification.—Lee: 1965, c. 969, s. 3

§ 153-294.18. Authority to require connections.—The board of commissioners of any county may require owners of improved property located so as to be served by any water or sewerage system to connect with said systems and fix charges for such connections. Provided, this section shall not apply to the board of commissioners of Lee County. (1963, c. 985, s. 1; 1965, c. 969, s. 2.)

Editor's Note. — The 1965 amendment added the proviso at the end of this section.

§ 153-294.19: Repealed by Session Laws 1969, c. 1010, s. 1, effective July 1, 1969.

Editor's Note. — The repealed section, which provided that this article should not apply to certain named counties, was amended by Session Laws 1965, cc. 109, 149, 261, 969; 1967, cc. 359, 473; 1969, c. 234, s. 2; c. 924.

Article 25.

Metropolitan Sewerage Districts.

§ 153-296. Definitions; description of boundaries.—(a) Definitions.—As used in this article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The term "board of commissioners" shall mean the board of commissioners of the county in which a metropolitan sewerage district shall be created under the provisions of this article.

(2) The word "cost" as applied to a sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and engineering and legal services, financing charges, interest prior to and during construction and, if deemed advisable by the district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for interest, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by the district or by any political subdivision prior to the issuance of bonds under the provisions of this article in connection with any such undertaking or any of the foregoing items of cost.

(3) The word "district" shall mean a metropolitan sewerage district created under the provisions of this article.

(4) The term "district board" shall mean a sewerage district board established under the provisions of this article as the governing body of a district or, if such sewerage district board shall be abolished, any board, body or commission succeeding to the principal functions thereof or upon which the powers given by this article to the sewerage district board shall be given by law.

(5) The term "general obligation bonds" shall mean bonds of a district for the payment of which and the interest thereon all the taxable property

within such district is subject to the levy of an ad valorem tax without limitation of rate or amount.

(6) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, of a political subdivision in which the general legislative powers thereof are vested, including, but without limitation, as to any political subdivision other than the county, the board of commissioners for the county when the general legislative powers of such political subdivision are exercised by such board.

(7) The word "person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or county.

(8) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.

(9) The term "revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a sewerage system or systems.

(9a) The word "revenues" shall mean all moneys received by a district from, in connection with or as a result of its ownership or operation of a sewerage system, including, without limitation and if deemed advisable by the district board, moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the district board pertaining to the sewerage system.

(10) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water or household and industrial wastes as may be present.

(11) The term "sewage disposal system" shall mean any plant, system, facility or property, either within or without the limits of the district, used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, or any integral part thereof, including but not limited to treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the district board for the operation thereof.

(12) The term "sewerage system" shall embrace both sewers and sewage disposal systems and any part or parts thereof, either within or without the limits of the district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures necessary or useful in connection with the ownership, operation or maintenance thereof.

(13) The word "sewers" shall mean any mains, pipes and laterals, including pumping stations, either within or without the limits of the district, for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system.

(1969, c. 993, s. 1.)

Editor's Note. — The 1969 amendment added subdivision (9a) to subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 153-297. Procedure for creation; resolutions and petitions for creation; notice to and action by State Stream Sanitation Committee; notice and public hearing; resolutions creating districts; actions to set aside proceedings.

The legislature has the sole power to create municipal corporations. The courts do not have that power. State ex rel. Dyer v. City of Leaksville, 275 N.C. 41, 165 S.E.2d 201 (1969).

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. State ex rel. Dyer v. City of Leaksville, 275 N.C. 41, 165 S.E.2d 201 (1969).

The number, nature, and duration of the powers conferred upon municipal corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. The State, therefore, at its pleasure, may modify or withdraw all such powers, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. In all these respects the State is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. State ex rel. Dyer v. City of Leaksville, 275 N.C. 41, 165 S.E.2d 201 (1969).

The governing body acts for the subdivision. Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

If No Subdivision, Majority of Freeholders Must Sign Petition.—If there is no subdivision and no governing body to act for the subdivision, a majority of the freeholders must sign the petition. Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 153-300. Powers generally; fiscal year.

Applied in Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 153-301. Bonds and notes authorized.—A metropolitan sewerage district shall have power from time to time to issue bonds and notes under the Local Government Finance Act. (1961, c. 795, s. 7; 1971, c. 780, s. 30.)

Editor's Note.—The 1971 amendment, effective July 1, 1973, rewrote this section.

See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§§ 153-302 to 153-308: Repealed by Session Laws 1971, c. 780, s. 31, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-310: Repealed by Session Laws 1971, c. 780, s. 31, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-311. Form and execution of bonds; terms and conditions; use of proceeds; interim receipts or temporary bonds; replacement of lost, etc., bonds; consent for issuance.—All bonds issued under the provisions of this article shall be dated, shall mature at such time or times not exceeding forty (40) years from their date or dates and shall bear interest at such rate or rates, all as may be determined by the district board, and may be made redeemable before maturity, at the option of the district board, at such price or prices and under such terms and conditions as may be fixed by the district board prior to the issuance of the bonds. The district board shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such person as at the actual time of the execution of such bond shall be duly authorized to sign such bond although at the date of such bond such person may not have been such officer. Notwithstanding any other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds shall be issued in coupon form, and provisions may be made by the district board for the registration of any bonds as to principal alone.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the district board may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing any revenue bonds.

Prior to the preparation of definitive bonds, the district board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by the Local Government Commission under the provisions of this article. Delivery of interim receipts or temporary bonds or of the bonds authorized pursuant to this article to the purchaser or order, or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The district board may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds and bond anticipation notes may be issued under the provisions of this article without obtaining the consent of any commission, board, bureau or agency of the State or of any political subdivision, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article. (1961, c. 795, s. 17; 1969, c. 993, s. 2.)

Editor's Note. — The 1969 amendment deleted, following "such rate or rates" in the first sentence, "not exceeding six per centum (6%) per annum."

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 31, effective July 1, 1973.

§ 153-312. Bonds and notes subject to provisions of Local Government Act; approval and sale.—All general obligation bonds and bond anticipation notes issued under the provisions of this article shall be subject to the provisions of the Local Government Act.

All revenue bonds issued under the provisions of this article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by said Commission, except that upon the filing with said Commission of a resolution of the district board requesting that its revenue bonds be sold at private sale and without advertisement and upon the approval of such request by said Commission, such bonds may be sold by said Commission at private sale and without advertisement to any purchaser or purchasers thereof, such sale to be for such price as said Commission shall determine to be in the best interests of the district and as shall be approved by the district board. (1961, c. 795, s. 18; 1969, c. 993, s. 3.)

Editor's Note. — The 1969 amendment rewrote the second paragraph.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 31, effective July 1, 1973.

§§ **153-314 to 153-316**: Repealed by Session Laws 1971, c. 780, s. 31, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 153-317. Authority of governing bodies of political subdivisions.

Subdivisions May Contract to Cut Off Water from Delinquent Sewerage Accounts. —A provision in contracts between a sewage district and certain subdivisions that the latter would cut off water from users who were delinquent in their sewerage accounts, is valid. Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 153-324. Inconsistent laws declared inapplicable.

Applied in Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

Article 26.

Assessments for Beach Erosion Control and Flood and Hurricane Protection.

§ **153-325. "Beach erosion control and flood and hurricane works" defined.**—As used in this article, beach erosion control and flood and hurricane works shall include any project involving the acquisition, construction, reconstruction, extension, improvement, enlargement, or replacement of groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements which are designed for the control of beach erosion or for the preservation or restoration of man-made facilities or natural features which afford protection to coastal beaches and other land areas and the life and property thereon. (1965, c. 714.)

§ **153-326. Authority to make special assessments.**—The board of commissioners of any county may specially assess all, or part, of the cost of any beach erosion control or flood and hurricane protection works against the property to be benefited by such works. The authority herein granted shall apply only to those counties which are bounded, in part, by the Atlantic Ocean. (1965, c. 714; 1969, c. 474, s. 1.)

Editor's Note. — The 1969 amendment eliminated a proviso relating to assessment of property within municipalities and a proviso setting a maximum amount for the assessment. The amendment also deleted "Provided, further" at the beginning and "or in whole" following "in part" near the middle of the second sentence.

§ **153-327. Bases for making assessments.**—Assessments may be made on the basis of:

(1) The frontage of land abutting on any beach erosion control or flood and hurricane protection works, at an equal rate per foot of frontage, or

(2) The frontage of land abutting on a beach or shoreline which is protected or benefited by any beach erosion control or flood and hurricane protection works, at an equal rate per foot frontage, or

(3) The acreage of land benefited by any beach erosion control or flood and hurricane protection works, at an equal rate per acre of land, or

(4) The valuation of land benefited by any beach erosion control or flood and hurricane protection works, the valuation to be based upon the value of the land without improvements as shown on the tax assessments records of the county, at an equal rate per dollar of valuation, or

(5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either acreage or the value of land, the board of commissioners may provide for the laying out of benefit zones according to the distance from the shoreline, the distance from the beach erosion control or flood and hurricane protection works, the elevation of the land, or other relevant factors, and establish differing rates of assessment to apply uniformly throughout each benefit zone. (1965, c. 714.)

§ 153-328. Preliminary resolution to be adopted; contents.—Whenever the board of commissioners of any county determines to undertake any beach erosion control or flood and hurricane protection works and assess all, or part, of the cost thereof, the board shall first adopt a preliminary resolution setting forth its intention and describing the nature of the project, or projects, and the proposed terms and conditions by which it is to be undertaken. Specifically, the preliminary resolution shall contain, but not be limited to, the following:

(1) A statement of intent to undertake the project(s);
(2) A general description of the nature and location of the proposed project(s);
(3) A statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either acreage or value of land;
(4) A statement as to the percentage of the cost of the work which is to be specially assessed;
(5) If any assessments are proposed to be held in abeyance, a statement as to which assessments shall be so held and the period they will be held in abeyance;
(6) A statement as to the proposed terms of payment of the assessments; and
(7) An order setting a time and place at which a public hearing on all matters covered by the preliminary resolution will be held before the board, said public hearing to be not earlier than three weeks, nor later than ten weeks, from the date of the adoption of the preliminary resolution. (1965, c. 714.)

§ 153-329. Publication of preliminary resolution; mailing copies.—The board of commissioners shall cause a copy of the preliminary resolution to be published in a newspaper having general circulation in the county at least ten days prior to the date set for the public hearing on the proposed project or projects. In addition, the board of commissioners shall cause a copy of the preliminary resolution, containing the order for the public hearing, to be mailed to the owners of all property subject to assessment if the project, or projects, should be undertaken. The mailing of copies of the preliminary resolution shall be to the owners of that property as shown on the tax records of the county, and shall take place at least ten days prior to the date set for the public hearing on the preliminary resolution. The person designated to mail these resolutions shall file a certificate with the board of commissioners that such resolutions were mailed, the certificate to include the date of mailing. Such certificates shall be conclusive in the absence of fraud. (1965, c. 714.)

§ 153-330. Hearing on preliminary resolution; resolution directing undertaking of works.—At the time and place set for the public hearing, the board of commissioners shall hear all interested persons who appear with respect to any matter covered by the preliminary resolution. After the public hearing, if the board of commissioners so determines, the board may adopt a resolution directing that the project, or projects, covered by the preliminary resolution, or part of them be undertaken. This resolution shall describe the project, or projects, to be undertaken in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

(1) The basis on which the special assessments shall be levied which shall include a general description of the boundaries of the area benefited if the basis of assessment is either acreage or value of land;
(2) The percentage of the cost to be specially assessed;

(3) The terms of payment, including the conditions under which assessments are to be held in abeyance, if any.

Provided, the percentage of cost to be assessed as set forth in the resolution directing the undertaking of the project, or projects, may not be different from the percentage proposed in the preliminary resolution. If the board of commissioners decides that a different percentage of the cost should be assessed, following the hearing the board of commissioners shall adopt and advertise a new preliminary resolution as herein provided. (1965, c. 714.)

§ 153-331. Determination of total cost. — Upon completion of the project, or projects, the board of commissioners shall ascertain the total cost. In addition to the cost of construction, there may be included therein the cost of all necessary legal service, the amount of interest paid during construction, costs of rights of way, and the costs of publication of notices and resolutions. The determination of the board of commissioners as to the total cost of any project shall be conclusive. (1965, c. 714.)

§ 153-332. Preliminary assessment roll to be prepared; filing; publication and mailing of notices.—Upon determination of the total cost of any assessment project, the board of commissioners shall cause to be prepared a preliminary assessment roll, on which shall be entered a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, and the name or names of the owners of each parcel of land as far as the same can be ascertained; provided, that a map of the project on which is shown each parcel assessed and the basis for its assessment, together with the amount assessed against each such parcel and the name or names of the owner or owners, as far as the same can be ascertained, shall be a sufficient assessment roll.

After the preliminary assessment roll has been completed, it shall be filed in the office of the clerk to the board of commissioners where it shall be available for inspection. A notice of the completion of the assessment roll, setting forth in general terms a description of the project, noting the availability of the assessment roll in the office of the clerk for inspection, and stating the time and place for a hearing before the board of commissioners on the preliminary assessment roll, shall be published in a newspaper having general circulation in the county at least ten days prior to the date set for the hearing on the preliminary assessment roll. In addition, the board of commissioners shall cause a notice of the hearing on the preliminary assessment roll to be mailed to the owners of property, as shown on the tax records of the county, listed on the preliminary assessment roll at least ten days prior to the date of the hearing. In addition to the notice of the hearing, the notice mailed to the owners shall note the availability of the preliminary assessment roll for inspection in the office of the clerk to the board and shall state the amount of the assessment against the property of the owner or owners, as shown on the preliminary assessment roll. The person designated to mail these notices shall file a certificate with the board of commissioners that such notices were mailed, the certificate to include the date of mailing. Such certificates shall be conclusive in the absence of fraud. (1965, c. 714.)

§ 153-333. Hearing on preliminary assessment roll; revision or confirmation of roll; lien of assessments; delivery of copy to tax collector.—At the time set for the public hearing, or at some other time to which the public hearing may be adjourned, the board of commissioners shall hear objections to the preliminary assessment roll from all persons interested who appear. Then, or thereafter, the board of commissioners shall either annul, or modify, or confirm, in whole or in part, the assessments, either by confirming the preliminary assessments against any or all of the lots or parcels described in the preliminary assessment roll, or by canceling, increasing, or reducing the same as is determined to be proper in accordance with the basis for the assessment. If any property is omitted from the preliminary assessment roll, the board of commissioners may place it on the roll and levy the proper assessment. Whenever the board of commissioners shall confirm assessments for any project, the clerk to the board shall enter on the minutes of the board and on the assessment roll the date, hour, and minute of confirmation, and from the time of confirmation the assessments shall be a lien on the property assessed of the same nature and to the same extent as county and city taxes and shall be superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same shall be delivered to the county tax collector for collection in the same manner as taxes, except as herein provided. (1965, c. 714.)

§ **153-334. Publication of notice of confirmation of assessment roll and time for payment.**—After the expiration of twenty days from the confirmation of the assessment roll, the county tax collector shall cause to be published once in a newspaper having general circulation in the county a notice of confirmation of the assessment roll, and that assessments may be paid at any time before the expiration of thirty days from the date of the publication of the notice without interest, but if not paid within this time, all installments thereof shall bear interest at the rate of six per centum (6%) per annum from the date of the confirmation of the assessment roll. (1965, c. 714.)

§ **153-335. Appeal of assessments to superior court.**—If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within ten days after the confirmation of the assessment roll, file with the board of commissioners and the court a written notice that he takes an appeal to the superior court of the county, in which case he shall within twenty days after the confirmation of the assessment roll serve on the chairman of the board of commissioners or the clerk to the board of commissioners a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. (1965, c. 714.)

§ **153-336. Reassessments.**—The board of commissioners shall have the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of any special assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the cost of the project, all additional interest paid, or to be paid, as a result of the delay in confirming the assessment. The proceeding shall, as far as practicable, be in all respects as in the case of original assessments, and the reassessment shall have the same force as if it had originally been properly made. (1965, c. 714.)

§ **153-337. Payment of assessment in cash or by installments.**—The owner or owners of any property assessed shall have the option, within thirty days following the publication of the notice of the confirmation of the assessment roll, of paying the assessment in cash or of paying in not less than two and not more than ten annual installments, as may have been provided by the board of commissioners in the resolution directing the undertaking of the project giving rise to the assessment. With respect to payment by installment, the board of commissioners may provide

(1) That the first installment with interest shall become due and payable on the date when property taxes are due and payable and one subsequent installment and interest shall be due and payable on the same date in each successive year until the assessment is paid in full, or

(2) That the first installment with interest shall become due and payable sixty days after the date of the confirmation of the assessment roll, and one subsequent installment and interest shall be due and payable on the

same day of the month in each successive year until the assessment is paid in full. (1965, c. 714.)

§ 153-338. Enforcement of payment of assessments; interest; payment of installments in arrears.—No statute of limitations shall bar the right of the county to enforce any remedy provided by law for the collection of unpaid assessments, save from and after ten years from default in the payment thereof or if payable in installments, ten years from the default in the payment of any installments. Such assessments shall bear interest at the rate of six per centum (6%) per annum only.

Upon the failure of any property owner to pay any installment when due and payable, all of the installments remaining unpaid shall immediately become due and payable, and property and rights of way may be sold by the county under the same rules and regulations (except that the sale of liens shall not be required) rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. Provided, after the default in the payment of any installment of an assessment, the board of commissioners may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expense incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose. (1965, c. 714.)

§ 153-339. Assessments in case of tenants for life or years; liens of cotenants; apportionment of assessments.—The following provisions of the General Statutes concerning municipal special assessments, as they now exist and as they may be amended, with modifications as specified, shall apply to beach erosion control or flood and hurricane protection assessments levied by counties:

G.S. 160-95 to 160-97, which relate to assessments in case of tenants for life or years;

G.S. 160-98, which relates to liens in favor of cotenants or joint tenants paying assessments;

G.S. 160-191, which relates to apportionment of assessments where property has been or is subject to be subdivided (except that for "governing board," read "board of commissioners"). (1965, c. 714.)

§ 153-340. Authority to hold assessments in abeyance.—The board of commissioners of any county may, by resolution, provide that assessments levied as authorized in this article be held in abeyance without the payment of interest for any benefited property assessed. In providing for the holding of assessments in abeyance, the board of commissioners shall classify the property assessed according to general land use or other relevant factors, and shall provide that the period of abeyance be the same for all assessed property in any classification. Provided, said resolution may not provide for the holding in abeyance of any assessment for more than ten years. Any assessment held in abeyance shall, upon the termination of the period of abeyance, be paid in accordance with the terms set out in the confirming resolution.

All applicable statutes of limitations are hereby suspended during the time that any assessment is held in abeyance without the payment of interest, as provided in this section. Such time shall not be a part of the time limited for commencement of action for the enforcement of payment of any such assessment, and such action may be brought at any time within ten years from the date of the termination of the period of abeyance. (1965, c. 714.)

§ 153-341. Coastal municipalities granted same authority.—The authority granted in this article to the board of commissioners of any county bounded, in part, by the Atlantic Ocean is hereby granted to the governing board of any municipality bounded, in part, by the Atlantic Ocean.

For the purpose of exercising the authority granted by this section to the governing board of any municipality bounded, in part, by the Atlantic Ocean, all references in this article to "county," "counties," the "board of commissioners," the "county tax collector," and the "clerk to the board of commissioners" shall be construed, respectively, as referring to "municipality," "municipalities," the "municipal governing board," the "municipal tax collector," and the "municipal clerk." In G.S. 153-335 the references to "the superior court of the county" and the "chairman of the board of commissioners" shall be construed, respectively, as referring to "the superior court of the county in which the municipality is located" and the "mayor." (1969, c. 474, s. 2.)

ARTICLE 27.

County Inspection Department.

§ **153-342. Inspection department.** — The board of commissioners of every county in the State is hereby authorized to create an inspection department, which shall consist of one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the duties assigned. Such department may be headed by a superintendent or director of inspections. (1969, c. 1066, s. 1.)

Editor's Note. — Session Laws 1969, c. 1066, s. 3, provides: "The powers granted by this act are intended to supplement and be in addition to any existing powers of counties. Subject to this overriding intention, all laws and clauses of laws in conflict herewith are repealed to the extent of such conflict."

§ **153-343. Duties and responsibilities.**—The duties and responsibilities of any such inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction such State and local laws relating to

(1) The construction of buildings and other structures;

(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;

(3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition; and

(4) Other matters, as may be specified by the local governing board.

Such duties shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and such other actions as may be required in order adequately to enforce those laws. The governing board shall have the authority to enact such reasonable and appropriate provisions governing the enforcement of such laws, not inconsistent with law, as it may deem necessary. (1969, c. 1066, s. 1.)

§ **153-344. Territorial jurisdiction.**—Unless otherwise specified by law, the territorial jurisdiction within which a county inspection department may enforce the State Building Code (including plumbing, heating refrigeration, and electrical regulations), any local building regulations, and any local fire prevention code shall be all unincorporated areas of the county. (1969, c. 1066, s. 1.)

§ **153-345. Joint inspection department; other arrangements.** — A county governing board may enter into and carry out contracts with 1 (i) any municipality or municipalities, 2 (ii) any county or counties, or 3 (iii) any combination of municipalities and counties, under which the parties agree to create and support a joint inspection department for the enforcement of such State and local laws as may be specified in the agreement. The governing boards of the units which are parties to the agreement shall be authorized to make any necessary appropriations for such a purpose.

In lieu of a joint inspection department, a county governing board may designate an inspector from any other municipality or county to serve as a member of its inspection department, with the approval of the governing body of said municipality or county. Such inspector shall, while exercising the duties of such position, be considered a county employee.

The governing board of any municipality may request that the board of county commissioners of the county in which the municipality is located direct one or more county building inspectors to exercise their powers within part or all of the municipality's jurisdiction, and they shall thereupon be empowered to do so until such time as the municipal governing board officially withdraws its request.

Where a county is not exercising its authority to enforce building, electrical, and plumbing regulations within an area which is regulated by a muncipality's validly-enacted zoning ordinance, the governing board of the municipality may request in writing prior to April 1 of any fiscal year that the county initiate such enforcement no later than the beginning of the next fiscal year. If the county declines in writing to exercise such powers or if it fails to initiate enforcement by the beginning of the next fiscal year, the municipality shall thereupon be empowered to enforce all such regulations within said area. (1969, c. 1066, s. 1.)

§ **153-346. Financial support.**—The county governing board may appropriate for the support of the inspection department such funds as it deems necessary. It may provide for paying inspectors fixed salaries or it may in lieu thereof reimburse them for their services by paying over part or all of any fees collected. It shall have power to fix such reasonable fees for issuance of permits, inspections, and other services of the inspection department as it deems necessary. (1969, c. 1066, s. 1.)

§ **153-347. Conflicts of interest.**—No member of an inspection department shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of such building. No member of an inspection department shall engage in any work which is inconsistent with his duties or with the interests of the county. (1969, c. 1066, s. 1.)

§ **153-348. Failure to perform duties.**—If any member of any inspection department shall willfully fail to perform the duties required of him by law, or willfully shall improperly issue a permit, or shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance, he shall be guilty of a misdemeanor. (1969, c. 1066, s. 1.)

§ **153-349. Permits.**—No person shall commence or proceed with

(1) The construction, reconstruction, alteration, repair, removal, or demolition of any building or structure,
(2) The installation, extension, or general repair of any plumbing system,
(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or
(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to such work. Any permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and where the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless such plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. Where any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for such work shall be issued unless it is to be performed by such a duly licensed contractor. (1969, c. 1066, s. 1.)

§ **153-350. Time limitations on validity of permits.**—Any permit issued pursuant to G.S. 160-122 shall expire by limitation six months after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit therefor has been secured. (1969, c. 1066, s. 1.)

§ **153-351. Changes in work.**—After a permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where such changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of such changes or deviations has been obtained from the inspection department. (1969, c. 1066, s. 1.)

§ **153-352. Inspections of work in progress.**—As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. (1969, c. 1066, s. 1.)

§ **153-353. Stop orders.**—Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in such manner as to endanger life or property, the appropriate inspector may order the specific part of such work which is in violation or presents such a hazard to be immediately stopped. Such order shall be in writing to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. The owner or builder may appeal from such order to the North Carolina Commissioner of Insurance within a period of five days after such order is issued. Notice of such appeal shall be given in writing to the Commissioner of Insurance, with a copy to the local inspector. The Commissioner of Insurance shall promptly conduct a hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and he shall rule on such appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on said appeal no further work shall take place in violation of said order. Violation of a stop order shall constitute a misdemeanor. (1969, c. 1066, s. 1.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the last three sentences.

§ **153-354. Revocation of permits.**—The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for such revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with proper orders of the inspector; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing such permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked. (1969, c. 1066, s. 1.)

§ **153-355. Certificates of compliance.**—At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection, and if he finds that the completed work complies with all applicable State and local laws and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, until the inspection department has issued such a certificate; provided, however, that a temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building which the inspector finds may safely be occupied prior to final completion of the entire building. (1969, c. 1066, s. 1.)

§ **153-356. Periodic inspections.**—The inspection department shall make such periodic inspections as the governing board shall direct, by ordinance or otherwise, for unsafe, insanitary, or otherwise hazardous and unlawful conditions in structures within their territorial jurisdiction. In addition, it shall make such other inspections as may be required when it has reason to believe that such conditions may exist in a particular structure. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. (1969, c. 1066, s. 1.)

§ **153-357. Defects in buildings to be corrected.**—Whenever a local inspector finds any defects in a building, or finds that said building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner or the owner of the contents shall immediately remedy such defects, hazardous conditions, or violations of law in the property he owns. (1969, c. 1066, s. 1.)

§ **153-358. Unsafe buildings condemned.**—Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. (1969, c. 1066, s. 1.)

§ **153-359. Removing notice from condemned building.**—If any person shall remove any notice which has been affixed to any building or structure by a local inspector of any county, which notice shall state the dangerous character of the building or structure, he shall be guilty of a misdemeanor. (1969, c. 1066, s. 1.)

§ **153-360. Action in event of failure to take corrective action.**—If the owner of a building or structure which has been condemned as unsafe pursuant to G.S. 153-358 shall fail promptly to take corrective action, the local inspector shall give such owner written notice, by certified or registered mail to the last known address of the owner or by personal service,

(1) That said building or structure is in such a condition as appears to constitute a fire or safety hazard or to be dangerous to life, health, or other property;

(2) That a hearing will be held before the inspector at a designated place and time, which time shall be not less than ten days after the date of such notice, at which hearing the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, such notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least ten days prior to the hearing and a notice of the hearing published in a newspaper having general circulation in the county at least once and at least one week prior to the hearing. (1969, c. 1066, s. 1.)

§ **153-361. Order to take corrective action.**—If, upon a hearing held pursuant to the notice prescribed in G.S. 153-360, the inspector shall find that the building or structure is in such a condition as to constitute a fire or safety hazard or to be dangerous to life, health, or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy such conditions by repairing, closing, vacating, or demolishing the building or structure or taking such other steps as may be necessary, within such period, not less than sixty days, as the inspector may prescribe. (1969, c. 1066, s. 1.)

§ **153-362. Appeal; finality of order if not appealed.**—Any owner who has received an order under G.S. 153-361 shall have a right of appeal from such order to the county governing board, provided notice of such appeal is given in writing to the inspector and to the clerk, as agent of the governing board, within ten days following issuance of the order. In the absence of such an appeal, the order of the inspector shall be final. The governing board shall, on receipt of an appeal, hear the same within a reasonable time and take such action to affirm, modify and affirm, or revoke the order as it deems reasonable and proper. (1969, c. 1066, s. 1.)

§ **153-363. Failure to comply with order.**—If the owner of a building or structure fails to comply with an order issued pursuant to G.S. 153-361 from which no appeal has been taken, or fails to comply with an order of the county governing board following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1969, c. 1066, s. 1.)

§ **153-364. Equitable enforcement.**—Whenever any violation is denominated a misdemeanor under the provisions of this article, the proper local authorities of the county, either in addition to or in lieu of other remedies may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate such action or violation or to prevent the occupancy of the building or structure involved. (1969, c. 1066, s. 1.)

§ **153-365. Records and reports.**—The inspection department shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance granted, and all other work and activities of said department. Periodic reports shall be submitted to the local governing body and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require. (1969, c. 1066, s. 1.)

§ **153-366. Appeals.**—Unless otherwise specified by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within a period of ten days after such order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law. (1969, c. 1066, s. 1.)

§ 153-367. Establishment of fire limits.—The board of commissioners of every county may pass one or more ordinances establishing and defining fire limits, which may include business and industrial sections of the county lying in unincorporated areas not subject to a validly-adopted municipal zoning ordinance. Within such fire limits, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved (either into such fire limits or from one place to another within the limits), except upon the permit of the local inspection department approved by the Commissioner of Insurance. The board of commissioners may make such additional regulations as it shall deem necessary for the prevention, extinguishment, or mitigation of fires within such limits. (1969, c. 1066, s. 1.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" near the end of the section.

ARTICLE 28.

Rural Recreation Districts.

§ 153-368. Election to be held upon petition of voters.—Upon the petition of fifteen percent (15%) of the resident freeholders living in an area lying outside the corporate limits of any city or town, which area is described in the petition and designated as "....................................
(Here insert name)
Recreation District," the board of county commissioners of the county shall call an election in said district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) of the one hundred dollars ($100.00) valuation of property, for the purpose of providing recreational programs and facilities in said district.

Upon the petition of fifteen percent (15%) of the resident freeholders living in an area which has previously been established as a recreation district and in which there has been authorized by a vote of the people a special tax not exceeding ten cents (10¢) on the one hundred dollars ($100.00) valuation of property within the area, the board of county commissioners shall call an election in said area for the purpose of submitting to the qualified voters therein the question of increasing the allowable special tax for recreational programs and facilities within said district from ten cents (10¢) on the one hundred dollars ($100.00) valuation of [to] fifteen cents (15¢) on the one hundred dollars ($100.00) valuation on all taxable property within such district. Elections on the question of increasing the allowable tax rate for recreational programs and facilities shall not be held within the same district at intervals less than two years. (1969, c. 811; 1971, c. 698, s. 4.)

Editor's Note.—This Article, comprising §§ 153-368 to 153-382, was formerly Article 12B, §§ 160-166.3 to 160-166.17, of Chapter 160. It was reenacted and transferred to its present location by Session Laws 1971, c. 698, s. 4, effective Jan. 1, 1972.

§ 153-369. Duties of county board of commissioners as to conduct of election; cost of holding.—For the election so called as provided in G.S. 153-368, the board of commissioners of the county shall provide one or more polling places in said district, shall provide for a registrar or registrars and judges of election at said voting places, shall provide for the registration of all qualified voters living in said district, shall cause to be prepared the necessary ballots for voting at said election, shall fix the time and places for holding the same, and shall conduct said election in every other respect according to the provisions of the laws governing general elections so far as they may be applicable. The cost of holding the election shall be paid by the county. (1969, c. 811; 1971, c. 698, s. 4.)

§ **153-370. Ballots.**—At said election those voters who are in favor of levying a tax in said district for recreational programs and facilities therein shall vote a ballot on which shall be written or printed, "In favor of tax for recreational programs and facilities in .... Recreation District."
(Here insert name)
Those who are against levying said tax shall vote a ballot on which shall be written or printed the words, "Against tax for recreational programs and facilities for .... District."
(Here insert name)

Whenever an election is called pursuant to this Article on the question of increasing the tax limit for recreational programs and facilities in any area, those voters in favor of such increase therein shall vote a ballot on which shall be printed, "In favor of tax increase for recreational programs and facilities in .... Recreation District." Those who are against increasing the tax limit for recreational programs and facilities therein shall vote a ballot on which shall be printed, "Against tax increase for recreational programs and facilities in .... Recreation District." The failure of the election on the question of an increase in the tax for recreational programs and facilities shall not be deemed to be the abolishment of the special tax for recreational programs and facilities already in effect in said district. (1969, c. 811; 1971, c. 698, s. 4.)

§ **153-371. Tax to be levied and used for recreational programs and facilities.**—If a majority of the qualified voters voting at said election vote in favor of levying and collecting a tax in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in said district in such amount as it may deem necessary, not exceeding ten cents (10¢) on the one hundred dollars ($100.00) valuation of property in said district from year to year, and shall keep the same as a separate and special fund, to be used only for furnishing recreational programs and facilities within said district, as provided in G.S. 153-372.

Provided, that if a majority of the qualified voters voting at such elections vote in favor of levying and collecting a tax in such district, or vote in favor of increasing the tax limit in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in such districts in such amount as it may deem necessary, not exceeding fifteen cents (15¢) on the one hundred dollars ($100.00) valuation of property in said district from year to year. (1969, c. 811; 1971, c. 698, s. 4.)

§ **153-372. Methods of providing recreational programs and facilities.**—Upon the levy of such tax, the board of county commissioners shall, to the extent of the taxes collected hereunder, provide recreational programs and facilities for the district—

(1) By contracting with any incorporated city or town, with any incorporated nonprofit community recreation organization duly chartered under the laws of North Carolina and organized for the purposes set out in G.S. 160-157 and 160-158 [G.S. 160A-352 and 160A-353], or,
(2) By furnishing recreational programs and facilities itself if the county maintains organized recreational programs and facilities, or
(3) By establishing a recreation system within the district, or

(4) By utilizing any two or more of the above listed methods of furnishing recreational programs and facilities. (1969, c. 811; 1971, c. 698, s. 4.)

§ 153-373. Municipal corporations empowered to make contracts.—Municipal corporations are hereby empowered to make contracts to carry out the purposes of this Article. (1969, c. 811; 1971, c. 698, s. 4.)

§ 153-374. Administration of special fund; recreation district commission.—The special fund provided by the tax herein authorized shall be administered to provide recreational programs and facilities as provided in G.S. 153-372 by the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, or by a recreation district commission of three qualified voters of the area, to be known as .... Recreation District said board to be appointed by
(Here insert name)
the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, for a term of two years, said commission to serve at the discretion of and under the supervision of the board of county commissioners or boards of county commissioners if the area lies in more than one county. (1969, c. 811; 1971, c. 698, s. 4.)

§ 153-375. Authority, rights, privileges and immunities of counties, etc., performing services under Article.—Any county, municipal corporation or recreation district performing any of the services authorized by this Article shall be subject to the same authority and immunities as a county would enjoy in the operation of a county recreation system within the county, or a municipal corporation would enjoy in the operation of a recreation system within its corporate limits.

Members of any county, municipal or recreation district shall have all of the immunities, privileges and rights, including coverage by workmen's compensation insurance, when performing any of the functions authorized by this Article, as members of a county recreation system would have in performing their duties for a county, or as members of a municipal recreation system would have in performing their duties for and within the corporate limits of the municipal corporation. (1969, c. 811; 1971, c. 698, s. 4; c. 1093, s. 5.)

Editor's Note. — Session Laws 1971, c. 1093, s. 5, deleted "and" preceding "for a county" and "in" preceding "for and within" in the second paragraph.

§ 153-376. Procedure when area lies in more than one county.—In the event that an area petitioning for a tax election under this Article lies in more than one county said petition shall be submitted to the board of county commissioners of all the counties in which said area lies and election shall be called which shall be conducted by the joint boards of county commissioners and the cost of same shall be shared equally by all counties.

Upon passage, the tax herein provided shall be levied and collected by each county on all of the taxable property in its portion of the recreation district; the tax collected shall be paid into a special fund and used for the purpose of providing recreation programs and facilities for the district. (1969, c. 811; 1971, c. 698, s. 4.)

§ 153-377. Means of abolishing tax district.—Upon a petition of fifteen percent (15%) of the resident freeholders of any special recreation district or area, at intervals of not less than two years, the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, shall call an election to abolish the special tax for recreation programs and facilities for the area, the election to be called and conducted as provided in G.S. 153-369; if a majority of the registered voters vote to abolish said tax, the commissioners shall cease levy and collecting same and any unused funds of the district shall be turned over to and used by the county commissioners of the county collecting same as a part of its general fund, and any property or properties of the district or the proceeds thereof shall be distributed, used or disposed of equitably by the board of county commissioners or the boards of county commissioners. (1969, c. 811; 1971, c. 698, s. 4.)

§ **153-378. Changes in area of district.** — After a recreation district has been established under the provisions of this Article and recreation commissioners have been appointed, changes in the area may be made as follows:

(1) The area of any recreation district may be increased by including within the boundaries of the district any adjoining territory upon the application of the owner, or a two-thirds majority of the owners, of the territory to be included, the unanimous recommendation in writing of the recreation commissioners of said district, and the approval of the board or boards of county commissioners in the county or counties in which said recreation district is located. However, before said recreation district change is approved by the county commissioners, notice shall be given once a week for two successive calendar weeks in a newspaper having general circulation in said district, and notice shall be posted at the courthouse door in each county affected, and at three public places in the area to be included, said notices inviting interested citizens to appear at a designated meeting of said county commissioners, said notice to be published the first time and posted not less than 15 days prior to the date fixed for hearing before the county commissioners.

(2) The area of any recreation district may be decreased by removing therefrom any territory, upon the application of the owner or owners of the territory to be removed, the unanimous recommendation in writing of the recreation commissioners of said district, and the approval of the board or boards of county commissioners of the county or counties in which the district is located.

(3) In the case of adjoining recreation districts having in effect the same rate of tax for recreational programs and facilities, the board of county commissioners, upon petition of the recreation commissioners shall have the authority to relocate the boundary lines between such recreation districts in accordance with the petition or in such other manner as to the board may seem proper. Upon receipt of such petition, the board of county commissioners shall set a date and time for a public hearing on the petition, and notice of such hearing shall be published in some newspaper having general circulation within the districts to be affected once a week for two weeks preceding the time of the hearing. Such hearings may be adjourned from time to time and no further notice is required of such adjourned hearings. In the event any boundaries of recreation districts are altered or relocated under this section, the same shall take effect at the beginning of the next succeeding fiscal year after such action is taken.

(4) In the case of adjoining recreation districts having in effect a different rate of tax for recreational programs and facilities, the board of county commissioners, upon petition of two thirds of the owners of the territory involved and after receiving a favorable recommendation of the recreation commissioners, may transfer such territory from one district to another and therefore relocate the boundary lines between such recreation districts in accordance with the petition or in such other manner as the board may deem proper. Upon receipt of such petition, the board of county commissioners shall set a date and time for a public hearing on the petition, and notice of such hearing shall be pub-

lished in some newspaper having general circulation within the districts to be affected once a week for two weeks preceding the time of the hearing. Such hearings may be adjourned from time to time and no further notice is required of such adjourned hearings. In the event any boundaries of recreation districts are relocated under this section, the same shall take effect at the beginning of the next succeeding fiscal year after such action is taken. (1969, c. 811; 1971, c. 698, s. 4.)

§ **153-379. Privileges and taxes where territory added to district.**—In case any territory is added to any recreation district, from and after such addition, the taxpayers and other residents of said added territory shall have the same rights and privileges and the taxpayers shall pay taxes at the same rates as if said territory had originally been included in the said recreation district. (1969, c. 811; 1971, c. 698, s. 4.)

§ **153-380. Privileges and taxes where territory removed from district.**—In case any territory is removed from any recreation district from and after said removal, the taxpayers and other residents of said removed territory shall cease to be entitled to the rights and privileges vested in them by their inclusion in said recreation district, and the taxpayers shall no longer be required to pay taxes upon their property within said district. (1969, c. 811; 1971, c. 698, s. 4.)

§ **153-381. Contract with city or town to which all or part of district annexed concerning property of district and furnishing of recreational programs and facilities.**—Whenever all or any part of the area included within the territorial limits of a recreation district is annexed to or becomes a part of a city or town, the governing body of such district may contract with the governing body of such city or town to give, grant or convey to such city or town, with or without consideration, in such manner and on such terms and conditions as the governing body of such district shall deem to be in the best interests of the inhabitants of the district, all or any part of its property, including, but without limitation, any recreation equipment or facilities, and may provide in such contract for the furnishing of recreational programs and facilities by the city or town or by the district. (1969, c. 811; 1971, c. 698, s. 4.)

§ **153-382. When district or portion thereof annexed by municipality furnishing recreational programs and facilities.**—When the whole or any portion of a recreation district has been annexed by a municipality furnishing recreational programs and facilities to its citizens, then such recreation district or the portion thereof so annexed shall immediately thereupon cease to be a recreation district or a portion of a recreation district; and such district or portion thereof so annexed shall no longer be subject to G.S. 153-371 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing recreational programs and facilities therein.

Nothing herein shall be deemed to prevent the board of county commissioners from levying and collecting taxes for recreational programs and facilities in the remaining portion of a recreation district not annexed by a municipality, as aforesaid. (1969, c. 811; 1971, c. 698, s. 4.)

Chapter 154.

County Surveyor.

Sec.
154-3. [Repealed.]

§ **154-3**: Repealed by Session Laws 1969, c. 1003, s. 8, effective July 1, 1969.

Editor's Note.—The repealed section had previously been amended by Session Laws 1965, c. 341.

Chapter 155.

County Treasurer.

Sec.
155-1 to 155-8. [Repealed.]
155-10. [Repealed.]
Sec.
155-12 to 155-14. [Repealed.]
155-16 to 155-18. [Repealed.]

§§ **155-1 to 155-8**: Repealed by Session Laws 1971, c. 780, s. 34, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **155-10**: Repealed by Session Laws 1971, c. 780, s. 34, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **155-11. Treasurer administers property held in trust for county.** —Except where the deed, will or other document creating the trust or order of a court of competent jurisdiction otherwise provides, all real and personal property held by deed, will or otherwise by any person or officer in trust for any county, or for any charitable use to be administered in and for the benefit of such county or the citizens thereof, shall be transferred to and vest in the county treasurer, to be administered and applied by him under the direction of the board of commissioners, upon the same uses, purposes and trusts as declared by the grantor, testator or other person in the original deed, devise or other instrument of donation. (1869-70, c. 85; Code, s. 778; Rev., s. 1400; C. S., s. 1395; 1971, c. 1074.)

Editor's Note. — The 1971 amendment added the exception at the beginning of the section.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 34, effective July 1, 1973.

§§ **155-12 to 155-14**: Repealed by Session Laws 1971, c. 780, s. 34, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§§ **155-16 to 155-18**: Repealed by Session Laws 1971, c. 780, s. 34, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Chapter 156.

Drainage.

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

Sec.
156-69. Nature of the survey; conservation and replacement of fish and wildlife habitat; structures to control and store water.

Article 11.

General Provisions.

Sec.
156-138.4. Procedures to be followed in connection with drainage projects that involve channelization.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

ARTICLE 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Name of proceeding.

Editor's Note.—For note on disposition of diffused surface waters in North Carolina, see 47 N.C.L. Rev. 205 (1968).

Part 2. Petition under Agreement for Construction.

§ 156-26. Procedure upon agreement.—(a) Agreement; Names Filed.—Whenever a majority of the landowners or the persons owning three fifths of all the lands in any well-defined swamp or lowlands shall, by a written agreement, agree to give a part of the land situated in such swamp or lowlands as compensation to any person, firm, or corporation who may propose to cut or dig any main drainway through such swamp or lowlands, or shall, by written agreement, contract with any person, firm or corporation to cut or dig any main drainway through such swamp or lowlands, then the person, firm, or corporation so proposing to cut or dig such main drainway shall file with the clerk of the superior court of the county, or, if there be two or more counties, with the clerk of the superior court of either county in or through which the proposed canal or drainway is to pass, the names of the landowners, with the approximate number of acres owned by each to be affected by the proposed drainway who have entered into the written agreement with the person, firm, or corporation, together with a brief outline of the proposed improvement, and in addition thereto shall file with the clerk the names and addresses, as far as can be ascertained, of the landowners, with the number of acres owned by each of them to be affected by the proposed drainway, who have not made any agreement with the person, firm, or corporation proposing to do the improvement.

(1969, c. 1046.)

Editor's Note.—
The 1969 amendment inserted, near the beginning of subsection (a), "or shall, by written agreement, contract with any person, firm or corporation to cut or dig any main drainway through such swamp or lowlands."

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Exemption of Housing Authority from Fees.—See opinion of Attorney General to Honorable F. Crane, Commissioner of Labor, 41 N.C.A.G. 303 (1971).

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

Editor's Note.— For note on disposition of diffused surface waters in North Carolina, see 47 N.C.L. Rev. 205 (1968).

§ 156-57. Bond filed and summons issued.—Upon filing with the petition a bond for the amount of fifty dollars ($50.00) per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk, shall at any time thereafter, issue summons to be served on all the defendant landowners, who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendant who cannot be personally served as provided by law.

The attorney for the petitioners shall certify to the clerk of the superior court, prior to the hearing on the final report of the board of viewers, that due diligence has been used to determine the names of all landowners within the area of the proposed drainage district; and, that summons has been issued for such landowners, so determined, and served either by personal service or by publication for all known and unknown landowners, insofar as could be determined by due diligence. (1909, c. 442, s. 2; C. S., s. 5315; 1967, c. 621.)

Editor's Note. — The 1967 amendment inserted "at any time thereafter" in the first sentence of the first paragraph and added the second paragraph.

§ 156-61. Estimate of expense and manner of payment; advancement of funds and repayment from assessments.—The clerk may make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The assessment above provided for which has been or may hereafter be levied shall constitute a first and paramount lien, second only to State and county taxes, upon the lands so assessed, and shall be collected in the same manner and by the same officers as county taxes are collected. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners. When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall come into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement.

In lieu of the procedures set forth in the preceding paragraph, the board of county commissioners may advance funds, or any part thereof, for the purposes set forth in the preceding paragraph. Such advances shall be made to a county official designated by the commissioners, and shall be disbursed upon such terms as the county commissioners may direct. If the district shall be organized, the funds advanced shall be repaid from assessments thereafter levied. (1917, c. 152, s. 1; C. S., s. 5319; 1941, c. 342; 1961, c. 614, s. 6; c. 662.)

Editor's Note.—

This section is set out to correct a typographical error in the last sentence of the first paragraph in the replacement volume.

§ 156-69. Nature of the survey; conservation and replacement of fish and wildlife habitat; structures to control and store water.—The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established among the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done.

The board of viewers shall consider the effect of the proposed improvements upon the habitat of fish and wildlife, and the laws and regulations of the State Board of Health. Their report shall include their recommendations and the estimated cost thereof, as to the conservation and replacement of fish and wildlife habitat, if they shall determine such shall be damaged or displaced by the proposed improvement. The board, to determine their recommendations, may consult governmental agencies, wildlife associations, individuals, or such other sources as they may deem desirable, to assist them in their considerations of and recommendations relating to, the conservation and replacement of fish and wildlife habitat.

The board of viewers shall consider the need for and feasibility of, the construction of structures which will do one or more of the following:

(1) Control the flow of water

(2) Impound or store water and,

(3) Provide areas for conservation and replacement of fish and wildlife habitat.

If structures are recommended for any one or more of said purposes, their report shall include:

(1) Specifications therefor.

(2) Location thereof together with the description of the area of land needed for the purpose of said structure, i.e., water storage or impoundment, or fish and wildlife habitat.

(3) Estimate of cost thereof.

The report of the board of viewers shall set forth, in regard to the foregoing, the following information:

(1) The areas of land needed for construction and maintenance of:
  a. The canals and drainage system.
  b. Structures to:
    1. To control the water,
    2. Impound or store water and,
    3. To conserve and replace fish and wildlife habitat.

(2) Upon whose land such areas are located.

(3) The area of land necessary to be acquired from each landowner.

The map accompanying the report shall have shown thereon. the location of the areas of land needed for the construction and maintenance of the following:

(1) The canal and drainage system.

(2) Structures to:
  a Control the flow of water
  b. Impound or store the water
  c Conserve and replace fish and wildlife habitat.

The board of viewers may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of the State of North Carolina whereby such agency will furnish all or a part of the service necessary to obtain the information set forth in the preceding paragraph and in G.S. 156-68.

The board of viewers may accept such information as furnished by such agencies and include such information in their final report to the clerk.

The board of viewers and engineers of the district may use control or semi-control, mosaic aerial photographs or other sources and stereoscopic or other methods, generally used and deemed acceptable by civil and drainage engineers for the purpose of obtaining the information required in this section and in lieu of a detailed ground survey. In the event a detailed ground survey is not made, only those ground markings need be made as the board of viewers deem necessary. The location of the proposed canals must be shown on the ground prior to actual construction. (1909, c. 442, s. 10; C. S., s. 5327; 1959, c. 597, s. 1; 1961, c. 614, ss. 5, 9; 1965, c. 1143, s. 1.)

Editor's Note.—

The 1965 amendment deleted the former second and third paragraphs and inserted in lieu thereof present paragraphs two through six.

§ 156-70.1. When title deemed acquired for purpose of easements or rights-of-way; notice to landowner; claim for compensation; appeal.—The district shall be deemed to have acquired title for the purpose of easements or rights-of-way to those areas of land identified in the final report of the board of viewers and as shown on the map accompanying said report, at the time said final report is confirmed by the clerk of the superior court.

The board of viewers shall cause notice as to the area or areas of land involved, to be given to each landowner so affected, which notice shall be in writing and mailed to the last known address of the landowner at least seven (7) days prior to the hearing on the final report as provided by G.S. 156-73.

If the landowner desires compensation for the land areas so acquired by the district, claim for the value of the same shall be submitted to the board of viewers on or before the time of the adjudication upon the final report as provided for by G.S. 156-74.

If the board of viewers shall approve the claim, the amount so approved shall be added to the total cost of the district as estimated in said final report and this shall be done by amendment to the final report submitted to the clerk of the superior court on or before the adjudication provided for in G.S. 156-74.

If the board of viewers shall not approve said claim, the clerk of the superior court shall consider the claim and determine what in his opinion is a fair value and the amount so determined shall be shown in the said final report as amended and confirmed by said adjudication. The landowner or the drainage district may appeal from the decision of the clerk of the superior court, to the superior court, upon the question of the value of the land taken and such value shall be determined by a jury. The procedure for the appeal shall be in accordance with the provision of G.S. 156-75. (1959, c. 597, s. 2; c. 1085; 1965, c. 1143, s. 2.)

Editor's Note.—

The 1965 amendment deleted the former last sentence in the fifth paragraph and inserted in lieu thereof the present last two sentences.

§ 156-75. Appeal from final hearing.—Any landowner, party petitioner or the drainage district may, within ten days after the ruling or adjudication by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. Such appeal shall be taken and prosecuted as provided in special proceedings. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. In any appeal to the superior court in term time or in chambers taken under this section or any other section or provision of the drainage laws of the State, general or local, the same shall have precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the order in which the same shall be heard shall be determined by the court in the exercise of a sound discretion. (1909, c. 442, s. 17; 1911, c. 67, s. 3; C. S., s. 5333; 1923, c. 217, s. 2; 1969, c. 192, s. 1.)

Editor's Note.—

The 1969 amendment rewrote the first sentence, eliminated "now" preceding "provided" in the second sentence and substituted "filed thereto in writing by the appealing party" for "theretofore filed by the complaining party" in the third sentence.

Cited in In re Drainage, 261 N.C. 407, 134 S.E.2d 642 (1964).

ARTICLE 6.

Drainage Commissioners.

§ 156-81. Election and organization under amended act.

Local Modification.—Pitt, Drainage District No. 1: 1965, c. 746, s. 1.

§ 156-81.1. Treasurer.

Local Modification.—Hyde: 1967, c. 1010.

§ 156-82.1. Duties and powers of the board of drainage commissioners.

(g) The board of commissioners may authorize the use of stored or impounded water for recreational purposes. They may acquire title, by gift or purchase, but not by condemnation, of land to be used in conjunction with the stored and impounded water, for the development of recreational facilities.

The said commissioners are not authorized to use funds obtained from assessments upon the lands within the drainage district, for the purposes of the acquisition and development of recreational facilities. They are authorized to issue revenue bonds or notes, for the acquisition of land and construction and development of recreational facilities. The funds received from the use of the said recreational facilities, may be pledged for the payment of said revenue bonds and notes.

The terms and conditions of the issuance and payment of the said revenue bonds or notes, must be approved by the clerk of the superior court who has jurisdiction of the said drainage district.

The commissioners are authorized to enter into a contract with persons, association of persons or municipal or private corporations, for the operation of recreational facilities, owned by the drainage district. The contract may be entered into by negotiation or by award to the highest bidder at a public rental to be advertised as directed by the clerk of the superior court. The terms of the contract must be approved by the clerk of the superior court who has jurisdiction of the said drainage district.

(h) The commissioners may enter into a contract with a municipality or other nonprofit organizations, for the joint use of a facility for the impoundment or storage of water. The contract must be approved by the clerk of the superior court who has jurisdiction of the drainage district.

(i) All improvements constructed and acquired under the provisions of this subchapter shall be under the control and supervision of the board of drainage commissioners. It shall be their duty to keep all improvements in good repair. (1961, c. 614, s. 2; 1965, c. 1143, s. 3.)

Editor's Note. — The 1965 amendment added subsections (g) and (h) and redesignated the former last paragraph of this section as subsection (i).

As the rest of the section was not affected by the amendment, it is not set out.

ARTICLE 7.

Construction of Improvement.

§ 156-87. Right to enter upon lands; removal of timber.

Opinions of Attorney General.—Colonel Paul S. Denison, 11/10/69.

§ 156-88. Drainage across public or private ways.—Where any public ditch, drain or watercourse established under the provisions of this subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the State Highway Commission the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the Commission, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Commission shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Commission and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the appellate division, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Commission is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Commission for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Commission.

Where any public ditch, drain, or watercourse established under the provisions of this subchapter crosses a public highway or road, not under the supervision of the State Highway Commission, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the State Highway Commission, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private road; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the State Highway Commission or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C. S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11; 1969, c. 44, s. 78.)

Editor's Note.—

The 1969 amendment substituted "appellate division" for "Supreme Court" in the second sentence of the first paragraph.

ARTICLE 7B.

Improvement, Renovation, Enlargement and Extension of Canals, Structures and Boundaries.

§ 156-93.2. Proceedings for improvement, renovation and extension of canals, structures and equipment.

(10) Any landowner, party petitioner or the drainage district may, within ten days after the ruling or adjudication by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. Such appeal shall be taken and prosecuted as provided in special proceedings. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. All of the terms and provisions of G.S. 156-75 shall apply to the appeal. (1961, c. 614, s. 1; 1969, c. 192, s. 2.)

Editor's Note. — The 1969 amendment rewrote subdivision (10).

As only subdivision (10) was affected by the amendment, the rest of the section is not set out.

§ 156-93.3. Extension of boundaries.

(3) a. In the event the area meets the requirements of (2) a, it shall only be necessary for the petition to be filed by the board of commissioners of the district.

b. In the event the area meets the requirement of (2) b of this section, the owners of fifty per cent (50%) or more of the land area which it is proposed to include or forty per cent (40%) or more of the resident landowners who will be benefited within such area, must join with and be petitioners with the commissioners of the existing district, asking for the extension of boundaries and inclusion of land within the existing district.

Should the area proposed to be included within the boundary of the enlarged district embrace one or more existing drainage districts, the commissioners of any such district or districts may join in a petition to the court asking for the extension of boundaries of the existing district.

The joinder in the petition by the commissioners of such drainage district in the name of the district shall have the effect of including in the petition all of the land within said existing drainage district to the same extent as if the petition had been signed individually by each landowner of the district. The total acreage in such district or districts shall be included as land in the petition in determining whether or not the requirements under this section have been complied with.

(15) Any landowner, party petitioner or the drainage district may, within ten days after the ruling or adjudication by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. Such appeal shall be taken and prosecuted as provided in special proceedings. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. All of the terms and provisions of G.S. 156-75 shall apply to the appeal.

(1965, c. 1143, s. 4; 1969, c. 192, s. 3; cc. 440, 1002.)

Editor's Note. – The 1965 amendment added the last two paragraphs of subdivision (3) in paragraph b.

The first 1969 act rewrote subdivision (15). The second 1969 act inserted an amending clause, which had been inadvertently omitted in the first act. The third 1969 act corrected an error in the first act by inserting "the court upon the hearing of the appeal. All of the terms and" in subdivision (15).

As the rest of the section was not affected by the amendments, it is not set out.

§ 156-93.7. Existing districts may act together to extend boundaries within watershed.—If there shall be more than one drainage district in a drainage basin, or watershed, the board of drainage commissioners of any of the districts may initiate or join separately or collectively with the commissioners of one or more of other drainage districts, in the drainage basin or watershed, and/or with the owners of land within the drainage basin, whose lands are not included within an existing drainage district in a petition to the court, asking for the creation of a larger drainage district, or the extension of boundaries of one of the existing districts.

The joinder in the petition by the commissioners of an existing drainage district, acting in the name of the district, shall have the effect of including all of the land assessed within the drainage district, in the petition asking for the creation of the larger drainage district or the extension of boundaries of an existing district. The total area of assessed land, within the existing drainage district shall be included, as land in the petition, in determining whether or not the requirement of G.S. 156-93.3 (3) b have been fulfilled.

The provisions of this section shall apply in proceedings provided for in G.S. 156-93.2 and 156-93.3. (1961, c. 614, s. 1; 1965, c. 1143, s. 5.)

Editor's Note. – The 1965 amendment rewrote this section.

ARTICLE 8.

Assessments and Bond Issue.

§ 156-97. Bonds issued.

(3) The interest upon said bonds shall not be more than eight percent per annum, from the date of issue and payable semiannually;

(6) If the total amount of bonds to be issued does not exceed ten percent of the total amount of the assessment, the board of commissioners may, in their discretion, not issue any bonds and in lieu thereof issue assessment anticipation bonds which shall mature over a period of not less than four nor more than ten years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than eight per centum per annum;

(1969, c. 878.)

Editor's Note.—The 1969 amendment increased the maximum rate of interest in subdivisions (3) and (6) from six percent to eight percent per annum.

As the rest of the section was not changed by the amendment, only subdivisions (3) and (6) are set out.

ARTICLE 11.

General Provisions.

§ 156-138.4. Procedures to be followed in connection with drainage projects that involve channelization.—Every drainage project that involves channelization shall be subject to the procedures set forth in G.S. 139-47. (1971, c. 1138, s. 4.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE
Raleigh, North Carolina
November 1, 1971

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1971 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN
Attorney General of North Carolina

ARTICLE 6.

Assessments and Bond Liens.

§ 156-97. Bonds issued. —

(5) The interest upon said bonds shall not be more than eight percent per annum, from the date of issue and payable semiannually.

(6) If the total amount of bonds to be issued does not exceed [illegible] percent of the total amount of the assessment, the board of commissioners may, in their discretion, [illegible] bonds [illegible] assessment anticipation bonds which shall mature over a period of not less than [illegible] and not more than ten years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than eight per centum per annum.

[illegible]

[illegible] the rate of the interest was not changed by the amendment, only subdivisions (5) and (6) are set out. [illegible] and (6) [illegible] six percent to eight [illegible]

ARTICLE 11.

General Provisions.

§ 156-138.4. Procedures to be followed in connection with drainage projects that involve channelization. — Every drainage project that involves channelization shall be subject to the procedures set forth in G.S. [illegible] (1971, [illegible])

STATE OF NORTH CAROLINA

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Robert Morgan

Attorney General of North Carolina

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